

### **Confidentiality of State Employee Home Addresses I**

SECTION 4. Clause Twenty-sixth of section 7 of chapter 4 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subclause (n) the following 2 subclauses:-

(o) the home address and home telephone number of an employee of the judicial branch, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o) .

### **Transportation Reform I**

SECTION 5. Chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out section 57, and inserting in place thereof the following section:-

Section 57. There shall be a commission to be known as the Massachusetts aeronautics commission, consisting of 7 members to be appointed by the governor, no more than 5 of whom shall, at any 1 time, be members of the same political party. One of the members shall be the secretary of the executive office of transportation, who shall serve as chairperson of the commission. Of the members appointed by the governor, 4 shall be persons having practical experience in aeronautics, 1 shall be a person with experience in homeland or airport security, and at least 1 member shall be a resident of a city or town in which a regional airport facility is located. Upon the expiration of the term of office of a member of the commission, his successor shall be appointed for a term coterminous with that of the governor. Each member of the commission shall serve as a commissioner without pay.

The commission shall be provided with suitable offices at the General Edward Lawrence Logan Airport and elsewhere within the commonwealth as the commission may determine.

The commission may, subject to appropriation, incur such expenses as may be necessary to administer and enforce sections 35 to 52, inclusive, of chapter 90 and other laws of the commonwealth relating to aeronautics, including the purchase of civil air patrol aviation education training aid books and materials necessary in carrying out crash, rescue and emergency operations and the organization thereof and for cadet training activities at a cost not to exceed \$20,000 annually.

The commission may pay a proper charge for effecting insurance providing for the indemnification and protection of a pilot of the aircraft under its custody, care and control, for expenses or damages incurred by him in the defense or settlement of claims against him for bodily injuries, death, or for damage to property arising out of his operation of such aircraft while acting within the scope of his official duties or employment.

The commission shall make an annual report to the general court.

### **Accessible Housing Registry**

SECTION 6. Section 79 of said chapter 6, as so appearing, is hereby amended by inserting before the word "it", in line 36, the following words:- in conjunction with the executive office of health and human services,.

### **Forensic Sciences Advisory Board**

SECTION 7. Chapter 6 of the General Laws, as so appearing, is hereby amended by inserting after section 184, the following section:-

Section 184A. There shall be in the executive office of public safety a forensic sciences advisory board, hereinafter called the board, which shall advise the secretary on all aspects of the administration and delivery of

criminal forensic sciences in the commonwealth. The board shall consist of the undersecretary of public safety for forensic sciences, who shall also serve as chair of the board, the attorney general, the colonel of the state police, the president of the Massachusetts chiefs of police association, the president of the Massachusetts urban chiefs association, the president of the Massachusetts district attorney's association, a district attorney designated by the Massachusetts district attorney's association and the commissioner of the department of public health or their respective designees. The members shall serve without compensation. The board shall meet no less than quarterly and as otherwise convened by the undersecretary. The board shall coordinate its responsibilities with the medico-legal investigation commission and shall not infringe upon the commission's authority as established in section 184 of this chapter.

At the direction of the board, the undersecretary for forensic sciences shall advise the board on the administration and delivery of forensic services in the Commonwealth. The undersecretary shall include in his report such information as the board requests, including but not limited to the volume of forensic services required for each county, including costs and the length of time from submission for testing or procedures and return of results; the capacity of the Commonwealth's forensic services and funding requirements; the accreditation of forensic facilities and training of personnel; facilities expansion, including location and funding for a new state police crime lab; and partnerships with other public and private forensic services. The undersecretary shall make recommendations for the allocation of resources and expansion of services, and on an annual basis, submit budget recommendations to the secretary of public safety and the board.

## **Transportation Reform II**

SECTION 8. Section 2 of chapter 6A of the General Laws, as most recently amended by chapter 26 of the acts of 2003, is hereby further amended by striking out the words "and construction."

## **Commonwealth Development Coordinating Council Changes Transportation Reform III**

SECTION 8A. Chapter 6A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out Section 8B and inserting in place thereof the following section:-

Section 8B. (a) There shall be a commonwealth development coordinating council responsible for preparing a coordinated development policy for the commonwealth addressing housing, transportation, capital development, economic development and the preservation of environmental resources in the commonwealth. The council shall convene at least bimonthly.

(b) The council shall be comprised of a chair appointed by the governor, the secretaries of the executive offices of economic development, housing and community development, environmental affairs and transportation, and the commissioners of the department of capital asset management and maintenance, and of the division of energy resources, or their respective designees. The chair shall serve at the pleasure of the governor and serve as an ex-officio member of the governor's cabinet but shall not have supervisory authority over other cabinet members. The governor shall appoint the following advisory members: the chairman of the Massachusetts water resources authority, a representative from the Massachusetts Bay transportation authority advisory board, the executive director of a regional transportation authority, three regional planning representatives, a municipal planning representative and a professional planner.

(c) The coordinated development policy shall:

- (1) discourage wasteful use of land, water and energy resources;
- (2) support revitalization and reinvestment in urban areas and older suburbs; encourage reuse and rehabilitation of existing infrastructure rather than the construction of new infrastructure in undeveloped areas;
- (3) protect, to the maximum extent possible, environmentally sensitive lands, natural resources, wildlife habitats and cultural and historic landscapes;
- (4) support a range of convenient and affordable transportation choices;
- (5) protect economically productive natural areas including farmland and forests;
- (6) provide an adequate supply of affordable housing for all income levels throughout each community, particularly households earning 50 per cent or less of the area median income, as defined by the federal department of housing and urban development;
- (7) encourage a clear and transparent development approval process; encourage regional solutions and approaches to planning for transportation, housing development and water supply;

(8) require coordination among state agencies on sustainable growth efforts; encourage coordination and cooperation among all state agencies; and

(9) ensure that funding and construction activities by state agencies do not promote development that is inconsistent with state, regional and local sustainable development plans.

(d) The council shall:

(1) coordinate and make recommendations to capital planning done by agencies and political subdivisions of the commonwealth;

(2) resolve inconsistencies between agency plans and local or regional sustainable development plans;

(3) encourage state agencies to consider secondary growth impact in capital planning and to site facilities in areas with infrastructure rather than undeveloped areas;

(4) direct appropriate agencies to provide technical assistance as necessary to municipalities in their growth planning; and

(5) develop comprehensive policies and principles regarding the disposition, reuse and development of surplus commonwealth property which shall maximize the development of affordable housing, particularly near mass transit facilities, minimize environmental impact and respect local and regional input.

### **Department of Workforce Development Correction I**

SECTION 9. Section 16G of chapter 6A of the General Laws, as appearing in section 550 of chapter 26 of the acts of 2003, is hereby amended by striking out subsections (d) and (e) and inserting in place thereof the following 2 subsections:-

(d) The following state agencies shall be within the department of labor: the division of industrial accidents, the division of conciliation and arbitration, the labor relations commission, the joint labor-management committee, and the division of occupational safety.

(e) The following state agencies and funds shall be within the department of workforce development: the one stop career centers, the state workforce investment board, the division of apprentice training, the commonwealth corporation, the workforce training fund, and the division of unemployment assistance. The division of unemployment assistance shall include the medical security trust fund and the unemployment insurance trust fund.

### **Interagency Children's Service Teams**

SECTION 10. Said chapter 6A is hereby amended by inserting after section 16G, as so appearing, the following section:-

Section 16H. The secretary of health and human services shall convene interagency children's services teams to establish effective means of collaboration among and between human service agencies and other entities, including but not limited to school districts, for the provision of supports and services to children and to determine which agency or agencies within the jurisdiction of the secretary shall provide or contract for appropriate services to a child in cases when disputes arise among agencies over the delivery of services to a child or when the services are not being provided to a child. For purposes of this section, "agency" shall mean a department, office, commission, board, institution or other agency of the commonwealth within the executive office of health and human services. The teams shall be created on a local or regional basis in accordance with regulations to be developed by the secretary.

The secretary or his designee shall chair the local or regional interagency children's services teams and preside over meetings. The interagency teams shall also include the commissioner or chief executive officer, or his designee, of the following agencies: the department of public health, the department of social services, the department of education, the department of transitional assistance, the department of mental retardation, the department of mental health, the commission on the deaf and hard of hearing, the Massachusetts rehabilitation commission, the commission for the blind or any other agency considered necessary by the secretary to ensure delivery of appropriate and needed services to a child.

The interagency teams shall review the cases on a local or regional basis; seek to identify the assessments and services that might be provided to a family; provide opportunities to receive testimony and evidence from the child, the child's family, the representative of the child or family or the representative or other employee of an agency; designate an agency to act as a lead agency and develop a plan for collaboration; if necessary, designate an agency to provide or contract for such services; and direct a designated agency to accept responsibility for the child and provide or contract for the services.

Students may be referred to the local interagency team by a school district, by an agency or department of the state, or by a parent, guardian, surrogate parent, other service provider of the child, educational advocate or legal advocate representing the child. Written consent of the parent or guardian shall be required before a sharing of information concerning a child and all federal and state laws and regulations regarding consent, confidentiality, and privilege shall apply. The parent, guardian, surrogate parent, educational advocate or legal advocate of a child shall be provided notice in their primary language of their rights pursuant to this section, including notice of any referral, the requirement for parental consent to the release of information and records, and copies of all writings produced by the team; shall be part of the interagency team and shall be invited to interagency team meetings and participate actively in its work as it affects the child.

The interagency teams shall have full access to, and the agencies shall provide all information relevant to the cases if the appropriate consent is provided by parents or students, as may be established by applicable statutes or regulations. All confidential information shall be returned to its originating source upon completion of the team's work and shall not be retained by the interagency team or a member thereof and a member of the interagency team shall not disseminate confidential information to another individual or entity.

The interagency team shall keep a written record concerning the work of the interagency team with respect to each child referred to it, including information as to the services or placement sought, alternatives considered, conclusions reached, and further recommendations and the membership of the team. The parents, local school district and all relevant agencies shall be promptly informed of the results of the interagency team's work. A parent legal guardian, surrogate parent and educational advocate and legal advocate of a student shall have the right, upon request, to review or request copies of the written record maintained by the interagency team. The written record maintained by the interagency team shall be kept by the secretary, shall be kept confidential and shall not be disseminated by a team member.

Nothing herein shall be construed to alter individual education plan development processes, service provision or placement processes applicable to school districts or to alter existing due process rights and procedures under state or federal law. Further, the child and the parent, legal guardian, or educational surrogate of the child shall retain all applicable rights to consent or not to consent to an offered service that might be offered or recommended by the interagency team. Nothing herein shall be construed to require presentation of an issue to the interagency team before using any of the remedies under federal and state law including complaints to the department of education and hearings and mediations before the bureau of special education appeals.

If no collaborative plan is developed and no decision is agreed upon by a majority of the interagency team, the secretary shall designate and require an agency to provide appropriate and needed services to the child. If a designated agency fails to provide services to a child in a manner consistent with the decision of the team, the secretary shall review the matter. If the secretary finds that the decision of the interagency team is reasonable and within the jurisdiction of the designated agency, he shall direct the agency to provide services in accordance with the decision of the interagency team and shall take any other action consistent with state law to ensure that appropriate services are provided to the child.

The secretary shall promulgate regulations as to the operation of the interagency teams. These regulations shall mandate that the entire team process, including notification to all parties of the team's decision, shall be completed in no less than 30 working days. The regulations shall set forth an appeal pursuant to chapter 30A to a hearing officer appointed by the secretary.

For purposes of this section, "child" shall mean a person under the age of 18, or under the age of 22 if the person is disabled or has special needs.

The secretary shall issue an annual report summarizing the activities of the teams during the preceding fiscal year.

#### **Department of Public Safety Name Change 1**

SECTION 11. Section 18 of said chapter 6A, as appearing in the 2002 Official Edition, is hereby amended, by striking out, in lines 2 and 3, the words "department of public safety" and inserting in place thereof the following:- department of inspection and regulation.

#### **Creation of Forensic Sciences Undersecretary**

SECTION 12. Said chapter 6A of the General Laws, as most recently amended by section 22 of chapter 26 of the acts of 2003, is hereby amended by striking out section 18½, and inserting in place thereof, the following section:-

The secretary shall, subject to section 3, appoint 4 undersecretaries. Each person appointed as an undersecretary shall have experience and shall know the field or functions of such position, shall receive such salary as the secretary shall determine and shall devote his full time to the duties of the office.

One undersecretary shall be the undersecretary for law enforcement and administration and shall oversee the functions and administration of the following boards and agencies: the department of state police, the department of inspection and regulation, the emergency telecommunications board, the criminal history systems board, automated fingerprinting identification system, the municipal police training committee, the committee on criminal justice, the registry of motor vehicles, the merit rating board, the governor's council on highway safety, the division of inspection and the architectural access board.

One undersecretary shall be the undersecretary of criminal justice and shall oversee the functions and administration of the following boards and agencies: the sex offender registry board, the department of corrections including the parole board and all other agencies within said department.

One undersecretary shall be the undersecretary of homeland security and shall oversee the functions and administration of the following boards and agencies: the emergency management agency, the department of fire services, the military department and the nuclear safety department.

One undersecretary shall be the undersecretary for forensic sciences. The undersecretary shall work in conjunction with law enforcement authorities and shall coordinate all forensic science resources, appropriations and grants; shall oversee the functions and administration of the office of the chief medical examiner, the state police crime laboratory, and such other forensic entities as the secretary shall assign from time to time; and shall convene the Forensic Science Advisory Board consistent with the duties articulated in section 184A of chapter 6 of the General Laws.

Each undersecretary shall coordinate the functions and the programs of the agencies as directed by the secretary. Each undersecretary shall conduct studies of the operations of each agency and work with each agency in effecting procedures and programs which promote efficiency and improvements in the administration of the agency. Each undersecretary shall assist the secretary in reviewing and acting upon budgetary and other financial matters concerning said agencies in accordance with sections 2C, 3, 3A, 4, 9B and 29 of chapter 29.

#### **Transportation Reform IV**

SECTION 13. Said chapter 6A, as so appearing, is hereby amended by striking out section 19, and inserting in place thereof the following section:-

Section 19. The executive office of transportation shall serve as the principal agency of the executive department for the following purposes: (a) developing, coordinating, administering and managing transportation policies, planning and programs related to design, construction, maintenance, operations and financing; (b) supervising and managing the organization and conduct of the business affairs of the departments, commissions, offices, boards, divisions, authorities and other entities within the executive office to improve administrative efficiency and program effectiveness and to preserve fiscal resources; (c) developing and implementing effective policies and programs to assure the coordination and quality of roadway, transit, airport and port infrastructure and security provided by the secretary and all of the departments, agencies, commissions, offices, boards, divisions, authorities and other entities within the executive office.

The following state agencies are hereby declared to be within the executive office of transportation: the department of highways, including the government center commission established by section 1 of chapter 635 of the acts of 1960, and all other state agencies within the department except the registry of motor vehicles, the division of motorboats, and the division of waterways; and the Massachusetts aeronautics commission, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority and any regional transportation authorities established under chapter 161B.

The governor shall appoint a secretary of transportation, who shall serve at the pleasure of the governor and shall act as the executive officer in all matters pertaining to the administration, management, operation, regulation, planning, fiscal and policy development functions and affairs of the departments, commissions, offices, boards, divisions, authorities and other agencies within the executive office.

The secretary shall have the authority to: (a) through the department of highways and other agencies within the executive office, as appropriate, operate and administer the programs of roadway design, construction, repair, maintenance, capital improvement, development, and planning; (b) coordinate and supervise the administration of the executive office and its agencies to promote economy and efficiency and to leverage federal funding; (c) develop, in consultation with the commonwealth development coordinating council, and administer a long-term state-wide transportation plan for the commonwealth that includes planning for inter-modal and integrated

transportation; (d) develop, based on a public hearing process, procedures to be used for transportation project selection; (e) establish criteria for project selection to be used in the procedures developed pursuant to clause (d); (f) enter into agreements with commissions, offices, boards, divisions, authorities or other entities within the executive office to improve administrative efficiency and program effectiveness and to preserve fiscal resources; (g) pursuant to chapter 30A, make, amend and repeal rules and regulations for the management and administration of the executive office and agencies within the executive office; (h) execute all instruments necessary for carrying out the business of the executive office and its agencies; (i) acquire, own, hold, dispose of, lease and encumber property in the name of the executive office and its agencies; (j) enter into agreements and transactions with federal, state and municipal agencies and other public institutions and private individuals, partnerships, firms, corporations, associations and other entities on behalf of the executive office or its agencies; and (k) apply for and accept funds, including grants, on behalf of the commonwealth in accordance with applicable law. The secretary may delegate any of the foregoing powers to an officer having charge of a department, office, division or other administrative unit within the executive office.

The secretary shall establish a performance measurement system for the agencies within the executive office, which shall establish program goals, measure program performance against those goals and report publicly on progress to improve the effectiveness of transportation design and construction, service delivery and policy decision-making. The performance measurement system shall require each agency to develop a strategic plan for program activities and performance goals. The system shall require annual program performance reports which shall be submitted to the house and senate committees on ways and means and the joint committee on transportation.

Nothing in this chapter shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies and authorities except as expressly provided by law.

### **Emergency Telecommunications Program Funding I**

SECTION 14. Said chapter 6A, as so appearing, is hereby amended by striking out section 18H, inserted by section 1 of chapter 239 of the acts of 2002, and inserting in place thereof the following section:-

Section 18H. (a) The department of telecommunications and energy shall promulgate rules providing for the recovery by telecommunications companies of expenses that have been, are, or will be, until December 31, 2007, incurred that are associated with the services pursuant to sections 18A to 18F, inclusive, of this chapter and section 14A and 15E of chapter 166. With respect to any deficit incurred by the telephone companies before the effective date of this section, the department of telecommunications and energy shall determine the portion of directory assistance revenues that will be used to offset that deficit, including any interest the department may determine should be applied. The rules shall provide for the funding of the prudently incurred expenses by means of a charge on each voice grade exchange telephone line of business and residence customers within the commonwealth; but the surcharge applicable to centrex service shall be based on an equivalency provided to each private branch exchange trunk. In the development of the charge, all telephone companies shall submit to the department historical data verifying their participation in the statutory funding mechanism. The department of telecommunications and energy shall annually report to the general court concerning the financial condition of the fund and shall address in the report the reasonableness of the capital expenditures and related expenses of the statewide emergency telecommunications board incurred in complying with sections 14A and 15E of chapter 166.

(b) Each telecommunication company shall remit the surcharge revenues collected from its subscribers to the state treasurer for deposit in the Wireline Enhanced 911 Fund established in section 35W½ of chapter 10. The surcharge revenues shall be used by the board for the recovery by the board and telecommunications companies of expenses that have been, or will be, incurred in complying with sections 18A to 18F, inclusive, of this chapter and sections 14A and 15E of chapter 166.

### **Advertising Revenue**

SECTION 15. Chapter 7 of the General Laws is hereby amended by inserting, after section 4Q, the following section:-

Section 4R. The commissioner may promulgate regulations authorizing an agency or department to enter into an agreement with private vendors for the publication or production of public information brochures, pamphlets, audiotapes, videotapes and related materials for distribution without charge to the public. Unless the vendor agrees to provide additional compensation, costs of publication or production shall be paid in whole or in part by the vendor in exchange for the right to sell and place advertising that publicizes products or services related to and harmonious with the subject matter of the publication. An agency or department shall not enter into such an

agreement with a private vendor unless the agency or department retains the right, by written agreement, to disapprove any advertisement to be placed in its public information materials, including the form and content thereof, and retains the right to cancel the agreement without penalty if it disapproves of an advertisement to be placed in its public information materials.

### **Care and Operation of the State House**

SECTION 16. Chapter 8 of the General Laws is hereby amended by striking out section 9, as amended by section 32 of chapter 26 of the acts of 2003, and inserting in its place the following section:-

Section 9. The superintendent shall have charge of the care and operation of the state house, subject to rules as the committee on rules of the 2 branches acting concurrently may adopt, the John W. McCormack state office building, the Leverett Saltonstall state office building, the Springfield office building, the Pittsfield office building, the Erich Lindemann building, the Charles F. Hurley building and all state parking areas related thereto, and any other state properties designated by law, to be the responsibility of the superintendent of state office buildings, and shall see that the chambers and lobbies of the general court and of its committees are kept clean and in good order; shall superintend all ordinary repairs thereof and shall have charge of the current expenses for the care and preservation of the state house, and for the ordinary repairs of the furniture and fixtures therein. He shall take proper precautions against damage thereto, or to the furniture, fixtures or other public property therein; provided, however, that security in the state house shall be the responsibility of the director of the division of urban parks and recreation in consultation and coordination with the speaker of the house of representatives and the president of the senate. The director shall utilize the members of the urban park rangers program, established pursuant to section 34B of chapter 92, to maintain security; provided, further, that the commissioner shall carry out the responsibility subject to rules as the committee on rules of the 2 branches acting concurrently may adopt and shall not be subject to the authority of the superintendent. There shall be maintained an adequate passageway for foot passengers from north to south through the east wing or extension of the state house, to be kept open during the hours as the superintendent shall fix. The state house and all facilities located therein, including hearing rooms, shall be accessible to, functional for and safe for use by physically handicapped persons; provided further that the state shall make available a certain number of designated handicapped parking spaces for the general public; provided, however, that no construction required for the accessibility, functionality and safety shall commence until the superintendent of state buildings has completed the study required in section 2.

### **Assignment of Lottery Prizes**

SECTION 17. Chapter 10 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out section 28 and inserting in place thereof the following section: —

Section 28. The right of any person to a prize drawn is not assignable except under the following limited circumstances:

(1) Payment of any prize drawn may be paid to the estate of a deceased prize winner or to the IV-D agency under chapter 119A.

(2) Payment of any prize drawn may be made to any person under an appropriate judicial order.

(3) The commission may, by regulations adopted under section 24, permit assignment of prizes for purposes of paying estate and inheritance taxes, or to a trust the beneficiaries of which are the prize winner, his mother, father, children, grandchildren, brothers, sisters or spouse.

(4) Payment of any prize drawn may be made to a person under a voluntary assignment of the right to receive future prize payments, in whole or in part, if the assignment is made to a person or entity named as the assignee in an appropriate judicial order of a court of competent jurisdiction, which shall be the superior court sitting within and for the county in which the commission is situated or in which the assignor resides. Under this paragraph, a court may issue an order approving a voluntary assignment and directing the commission to make prize payments in whole or in part to the designated assignee, if the court finds that all of the following conditions have been met:

(A) The assignment is in writing, executed by the assignor and, by its terms, subject to the laws of the commonwealth;

(B) The court finds that the assignor:

(i) is of sound mind and not acting under duress,

(ii) has been advised regarding the assignment by his independent legal counsel and independent certified financial planner. For purposes of this clause, "independent" shall mean unrelated to, unassociated with, and not compensated by the assignee or the assignee's affiliates;

(iii) irrevocably agrees that he is subject to state income tax with respect to a gain or income which the assignor will recognize in connection with the transfer or assignment; and

(iv) understands and agrees that with regard to the assigned payments, the commonwealth, the commission, and the director shall have no further liability or responsibility to make said payments to the assignor.

(v) In making the findings under clauses (i), (ii), (iii), and (iv), absent a showing of special circumstances or hardship, the court shall require the personal appearance and in-court affirmation of the assignor. For purposes of this section, "special circumstances or hardship" shall mean the assignor resides outside of the commonwealth or a health or other condition makes a court appearance unduly costly, dangerous, or burdensome, in which case the court may, in its discretion, take evidence by way of telephonic testimony, video deposition, or written affidavit.

(C) At the time he executed the assignment contract, the assignor was provided with a written disclosure statement setting forth, in bold type of not less than 14 points, the payments being assigned, by amounts and payment dates; the purchase price being paid; the rate of discount to present value, assuming daily compounding and funding on the contract date; and the amount, if any, of closing, administrative or other fees or charges that will be charged to him or her; but, the disclosure statement shall be in a form approved by the commission.

(D) The assignor was advised in writing, at the time he signed the assignment contract, that he had the right to cancel the contract, without any further obligation, within 10 calendar days following the date the contract was executed, upon return of any payment received in consideration for the contract.

(E) The assignment contract shall provide that delinquent child support obligations of the assignor and debts owed to a state agency by the assignor, as of the date of the court order, shall be paid in full, at closing.

(F) If the court determines at the time of the hearing set forth in subparagraph (B) that the assignment is not in compliance then the court shall have discretion to void the assignment without recourse or obligation to the proposed assignor or assignee.

(5) In the case of a voluntary assignment for consideration made under a judicial order pursuant to paragraph (4), the assignee shall withhold 5.3 per cent of the purchase price and pay that withheld amount to the commonwealth as state income tax withholding to credit the account of the assignor, within 10 days of closing the assignment transaction.

(6) In the case of a voluntary assignment for consideration made under paragraph (4), delinquent child support obligations of the assignor and debts owed to a state agency by the assignor that are not paid in full, at closing of the assignment contract shall be offset by the commission first against remaining payments or portions thereof due the prize winner and then against payments due the assignee.

(7) The commonwealth, the commission, the director, and the agents and employees of the commission shall be discharged of all further liability upon payment of a prize in full to the parties identified in a court order entered under paragraph (4), less any amount offset under paragraph (6).

(8) Soliciting to buy or offering to sell rights to lottery prize winnings, either by assignment or through pledge as collateral for a loan, shall not be deemed selling or offering for sale lottery tickets or shares under this chapter.

(9) The director may establish a reasonable fee, payable by the assignee, to defray administrative expenses associated with assignments made under this section, including the cost to the commonwealth of a processing fee that may be imposed by a private annuity provider. The fee amount shall reflect the direct and indirect costs to the commonwealth associated with processing the assignments and shall be no greater than \$1,000 per transaction.

(10) Written notice of a proposed assignment under paragraph (4) and a court hearing concerning the proposed assignment shall be provided to the commission at least 10 days before a court hearing. The commission is not required to appear in or be named as a party to the action seeking judicial confirmation of an assignment under this section, but may intervene as of right in the proceeding. A certified copy of a court order approving a voluntary assignment shall be provided to the commission not later than 14 days before the date on which the payment is to be made.

(11) Nothing in this chapter shall exempt an assignee or person acting as broker, agent, or intermediary for an assignee, from the licensure requirement and other rules and restrictions imposed under section 96 of chapter 140.

(12) A court order obtained under paragraph (4), together with any other order issued in connection with any 1 prize drawn, shall not require the commission to divide payments among more than 3 different persons or entities.

(13) No business entity may seek or obtain an order approving a voluntary assignment of lottery prize payments under this section unless and until the business entity has first filed a written disclosure and registration statement with the state lottery and paid the registration fee specified in clause (iv) of this paragraph. The disclosure and registration statement shall list and disclose, under penalty of perjury under the laws of the commonwealth, the following:

(i) the registrant's name, mailing address, and telephone number;



- (ii) the name and address of the registrant's agent for service of process in the commonwealth;
  - (iii) claims by a lottery winner, a state lottery, a consumer protection agency or a state, federal, or local prosecutor or enforcement agency against the registrant or its affiliates in a state or federal court within the past 5 years, and the status and disposition of the claims;
  - (iv) the registrant's privacy, "do-not-call" and non-harassment policies.
- The registration and disclosure shall be accompanied by a non-refundable fee in the amount of \$2,500 payable to the commission by the registrant. All registrations and disclosures shall be maintained on file with the commission and shall be made available to a member of the public upon request.
- (14) An assignment in violation of this section shall be invalid. The commonwealth, the commission, the director, and the agents and employees of the commission shall not be liable to make payments pursuant to an invalid assignment.
- (15) This section shall prevail over section 9-405 of chapter 106.

### **Board of Registration in Medicine Trust Fund**

SECTION 18. Section 35M of chapter 10 of the General Laws, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words ";but, any unexpended balance at the end of the fiscal year shall revert to the General Fund".

### **Emergency Telecommunications Program Funding II**

SECTION 19. Said chapter 10 is hereby amended by inserting after section 35W, as so appearing, the following section:-

Section 35W½. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Wireline Enhanced 911 Fund. There shall be credited to the fund revenues received by the commonwealth from surcharges imposed under section 18H of chapter 6A; from appropriations; from gifts, grants, contributions and bequests of funds from any department, agency or subdivision of federal, state or municipal government, and any individual foundation, corporation, association or public authority; revenue derived from the investment of amounts credited to the fund; and federal funds made available for emergency telecommunication services. The fund shall be used solely for the purposes described in said section 18H of said chapter 6A. Amounts credited to the fund shall be available for expenditure by the statewide telecommunications board, without further appropriation.

### **Quality in Health Professions Trust Fund I**

SECTION 20. Section 35X of said chapter 10, as so appearing, is hereby amended by inserting, after the fourth sentence, the following sentence:- Monies deposited into the trust fund shall be spent exclusively by the board for the purposes set forth in the preceding sentence.

### **Quality in Health Professions Trust Fund II**

SECTION 21. Said section 35X of said chapter 10, as so appearing, is hereby further amended by striking out the seventh sentence.

### **State Facilities Disposition Trust Funds**

SECTION 22. Said chapter 10, as amended most recently by chapter 55 of the acts of 2003, is hereby further amended by inserting after section 35X the following 2 sections:-

Section 35Y. There shall be established and set up on the books of the commonwealth a separate fund known as the State Mental Health Facilities Disposition Trust Fund to be expended, without prior appropriation, by the department of mental health. The fund shall consist of 25 per cent of monies derived from the sale, lease, sublease, granting of easements or other conveyances related to the former Medfield State Hospital parcels or any other state mental health facility declared to be a surplus by the division of capital asset management and maintenance. Monies deposited into the fund shall be expended exclusively by the department for the following purposes in the following order of priority:

- (i.) to provide treatment for the commonwealth's mentally ill population;

- (ii.) to provide community services for clients of the department of mental health;
- (iii.) to subsidize or provide decent, safe, sanitary and supported housing for individuals who are considered chronically mentally ill; and
- (iv.) to provide consultation and educational services to community agencies and professional personnel.

The books and records of the State Mental Health Facilities Disposition Trust Fund shall be subject to a biennial audit by the state auditor.

Section 35Z. There shall be established and set up on the books of the commonwealth a separate fund known as the State Mental Retardation Facilities Disposition Trust Fund to be expended, without prior appropriation, by the department of mental retardation. The fund shall consist of 25 per cent of monies derived from the sale, lease, sublease, granting of easements or other conveyances related to any state mental retardation facility declared to be a surplus by the division of capital asset management and maintenance. Monies deposited into the fund shall be expended exclusively by the department for the following purposes in the following order of priority:

- (i.) to provide treatment for the commonwealth's mentally retarded population;
- (ii.) to provide community services for clients of the department of mental retardation;
- (iii.) to subsidize or provide decent, safe, sanitary and supported housing for individuals who are considered mentally retarded; and
- (iv.) to provide consultation and educational services to community agencies and professional personnel.

The books and records of the State Mental Retardation Facilities Disposition Trust Fund shall be subject to a biennial audit by the state auditor.

#### **Counsel for Indigent Salary Enhancement Trust Fund**

SECTION 23. Said chapter 10 is hereby further amended by inserting after section 35Z, inserted by section 22 of this act, the following section:-

Section 35AA. There is hereby established a separate fund to be known as the Counsel for Indigent Salary Enhancement Trust Fund. There shall be credited to the fund revenues collected pursuant to an initial filing fee of \$15 for a private application for a criminal complaint for a misdemeanor by a party, not being a law enforcement officer or prosecutor, in a court of the commonwealth; from grants, gifts, contributions from any entity public or private; and revenue derived from the investment of amounts credited to the fund. The chief counsel for the committee for public counsel services shall expend funds, without further appropriation, solely for hourly rate enhancements for private bar advocates for the indigent. No expenditures from the fund shall cause the fund to be in deficiency at the end of a fiscal year. The chief justice for administration and management, in consultation with the comptroller and the chief counsel of the committee for public counsel services, shall report monthly to the house and senate committees on ways and means on the status of the fund. In the event that the chief justice for administration and management, in consultation with the chief counsel for the committee for public counsel services, determines that the receipts for that fiscal year will be insufficient to pay hourly rate enhancements previously authorized, the chief counsel shall adjust hourly rate enhancements to ensure that the trust fund will have a positive balance at the end of the fiscal year.

On October 15 of each year the chief justice for administration and management, in consultation with the comptroller, shall certify and report to the house and senate committees on ways and means and the chief counsel for the committee for public counsel services the amount of trust fund receipts for the first quarter of the fiscal year and shall estimate total receipts for the fiscal year. Funds shall not be expended from the trust before the submission of the report. Upon receipt of the report, the chief counsel for the committee for public counsel services shall determine the hourly rate enhancement to be paid for that fiscal year, including retroactive payments for hours billed on or after July 1 of that fiscal year. Not more than \$12,000,000 shall be expended from the trust fund in any fiscal year. Hourly rate enhancements funded from this trust shall not be construed as a funding obligation in the general appropriation act or supplemental appropriations acts. Amounts received in excess of \$12,000,000 in a fiscal year shall be credited to the General Fund.

#### **Municipal Incentives for Smart Growth Zoning I**

SECTION 24. Said chapter 10 is hereby further amended by inserting after section 35AA, added by section 23 of this act, the following section:-

Section 35BB. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Smart Growth Housing Trust Fund to be used, without appropriation, by the department of housing and community development for the purpose of making payments to communities under section 10 of chapter 40R. Available revenues from the sale of state surplus lands, appropriations from the General Fund and monetary sanctions imposed by the department of housing and community development under subsection (c) of section 7 of chapter 40R shall be deposited into the trust fund. All monies deposited into the fund shall be expended exclusively for the purpose set forth in this section.

### **Establishing the Water Supply Protection Trust I**

SECTION 25. Said chapter 10 is hereby further amended by adding the following section:

Section 73. (a) There is hereby established and set up on the books of the commonwealth a separate trust to be known as the Water Supply Protection Trust. Monies in said trust shall be deposited with the state treasurer in such manner as will secure the highest interest rate available consistent with safety of the trust and with the requirement that all amounts on deposit be available for immediate use.

(b) There shall be a board of trustees of the trust, which shall consist of the commissioner of the department of conservation and recreation, the executive director of the Massachusetts water resources authority, the secretary of the executive office of environmental affairs, and a member jointly selected by the North Worcester County Quabbin Anglers and the Quabbin Fishermen's Association.

(c) The board of trustees shall meet no later than 90 days following the effective date of this section, and at least annually thereafter, and shall serve without compensation. For purposes of board of trustee meetings and voting, a quorum shall be comprised of 3 of the board members. The board of trustees shall choose a chairperson by majority vote and shall make all decisions by majority vote. At a meeting held annually, said board of trustees shall review and approve the operating plan, the operating budget, the capital budgets, and other aspects of the annual work plan prepared jointly by the department of conservation and recreation and the Massachusetts water resources authority pursuant to that interagency memorandum of understanding between the department and the authority on or about April 27, 2004, as it may be amended from time to time, and which memorandum and the annual work plan prepared thereunder shall provide for the watershed and water supply protection responsibilities established for the authority and department under chapter 372 of the acts of 1984, chapter 36 of the acts of 1992, chapter 29 of the acts of 2003, and chapters 92 and 92A ½ of the General Laws to be satisfactorily discharged. That memorandum may include additional provisions regarding the operation and governance of the trust; provided that the provisions shall be consistent with this section; and provided further, that in the event of an inconsistency between that memorandum and the terms and conditions of this section as they relate to the operation and governance of the trust, the terms and conditions of this section shall be dispositive.

(d) There shall be credited to the trust the following:

(1) all assessments against the authority established pursuant to section 11 of chapter 92A½, except for amounts to be paid in trust by the authority to the division of water supply protection for application to payments in lieu of taxes pursuant to chapter 59, and against any other public or private entity by the commissioner of the department for the purpose of supporting the watershed and water supply activities set forth in subsection(e);

(2) all revenues generated by the department's division of water supply protection required to be offset from assessments against the authority pursuant to section 11 of said chapter 92A½, which shall include, but not be limited to, the sale of hydroelectricity, recreational or permits fees, and shall also include any access fees established pursuant to chapter 436 of the acts of 1990;

(3) all revenues from the sale of wood products harvested on watershed lands;

(4) all payments from the authority for debt service pursuant to section 12 of said chapter 92A ½;

(5) all interest earned on monies in the trust; and

(6) gifts, grants, donations, or other contributions made for the purpose of supporting the watershed and water supply activities set forth in subsection (e).

(e) Notwithstanding any general or special law or other restriction to the contrary, expenditures from the trust shall not be subject to appropriation and balances remaining at the end of any fiscal year shall not revert to the general fund, and expenditures from the trust shall be made only for the purposes set forth in the memorandum and annual work plan as approved pursuant to subsection (c), including:

(1) the maintenance and operating costs of the department's division of water supply protection, as established in sections 1 to 20, inclusive, of chapter 92A½, including the costs of capital improvements necessary to ensure the safety and purity of the water supply and protection of watershed lands pursuant to state and federal standards, the costs of watershed land acquisition and other capital costs, and the costs of the purchase or leasing of vehicles and all other equipment as considered necessary by the division, and other authorized charges of the division of water supply protection, as set forth in the Annual Work Plan's operating plan, operating budget, and capital budgets prepared jointly by the department and authority, and reviewed and approved by the board of trustees pursuant to section 73 (c), provided that no expenditure may be made for operating, maintenance, and capital costs of the department's division of water supply protection that were previously budgeted as expenses of the former department of environmental management that were non-reimbursable by the authority. The nature and extent of such expenses to be excluded shall be as set forth in the memorandum, which shall be controlling on all issues related to the watershed and waterworks systems under the jurisdiction of the parties thereto, and shall be amended and renewed from time to time by the mutual consent of the parties thereto;

(2) department salaries, staffing levels, other employee expenses, operational expenses, acquisition of capital equipment and property, and all other expenses, as set forth in the Annual Work Plan's operating plan, operating budget, and capital budgets prepared jointly by the department and authority, and reviewed and approved by the board of trustees pursuant to subsection (c); and

(3) debt service payments for bonds authorized by the general court for the acquisition of fee simple, development, and other rights or interests in land in the areas regulated by said division of water supply protection, if the bonds were authorized and bonded indebtedness incurred before the establishment of the trust.

(f) For the purpose of accommodating timing discrepancies between the trust's receipt of revenues and related expenditures, the trust may incur expenses and the comptroller may certify payments from the trust in anticipation of trust receipts; but, the board of trustees shall annually certify to the comptroller that expenditures for the previous fiscal year did not exceed related assessments and trust receipts. In the event that legislation is enacted abolishing, repealing, or otherwise amending the trust so as to require that any balance in the trust revert or otherwise be credited to the general fund or be used for any purpose other than those established in the subsection (e), then upon that enactment, the comptroller shall pay to the authority all trust funds previously deposited therein by the authority before the trust's balance reverting to or being credited to the general fund, or being used for any purpose other than those established under said subsection (e).

#### **Division of Professional Licensure Oversight I**

SECTION 26. Chapter 13 of the General Laws is hereby amended by inserting after section 9B, as appearing in the 2002 Official Edition, the following section: --

Section 9C. Each board of registration shall be immune from liability for actions taken in good faith in the discharge of its responsibilities. Board members acting in good faith in the discharge of their duties shall be defended by the attorney general and shall be eligible for indemnification of all costs and damages arising from claims and suits against them.

#### **Addition of Early Education and Care Commissioner to Board of Education I**

SECTION 27. Section 1E of chapter 15 of the General Laws, as so appearing, is hereby amended by inserting after the words "education," in line 4, the following words: -- the early education and care commissioner,.

#### **Addition of Early Education and Care Commissioner to Board of Education II**

SECTION 28. Said section 1E of said chapter 15, as appearing in the 2002 Official Edition, and is hereby further amended by striking out, in line 8, the word “five” and inserting in place thereof the following figure:- 6

#### **Addition of Early Education and Care Commissioner to Board of Higher Education**

SECTION 29. Subsection (a) of section 4 of chapter 15A of the General Laws, as amended by section 683 of chapter 26 of the acts of 2003, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- The board of higher education, hereinafter referred to as the board, shall be composed of 13 voting members, consisting of the commissioner of education, ex officio, the commissioner of early education and care, ex officio, 8 members appointed by the governor reflecting regional geographic representation, and 3 members chosen to represent public institutions of higher education.

#### **Board of Higher Education Quorum Adjustment**

SECTION 30. Said section 4 of said chapter 15A, as so amended, is hereby further amended by striking out subsection (g) and inserting in place thereof the following subsection:-

(g) Seven members of the board shall constitute a quorum and the affirmative vote of 7 members shall be necessary for any action taken by the board.

#### **Higher Education Campus Advocacy**

SECTION 31. Section 5 of said chapter 15A of the General Laws, as appearing in the 2002 official edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The board shall coordinate activities among the public institutions of higher education and shall engage in advocacy on their behalf, which advocacy shall include a sustained program to inform the public of the needs, importance, and accomplishments of the public institutions of higher education in the commonwealth.

#### **Higher Education Campus Accountability**

SECTION 32. Section 7A of said chapter 15A, inserted by section 687 of chapter 26 of the acts of 2003, is hereby amended by striking out subsection (f) and inserting in place thereof the following subsection:-

(f) The board shall use accountability objectives, performance measures and each institution's mission implementation plan to conduct annual evaluations of the performance of each institution. If an institution fails to meet a reasonable number of the accountability objectives, as determined by the performance measures, within a given year, the institution's board of trustees shall develop and implement a performance improvement plan and timetable to be approved by the board of higher education. Each plan shall be submitted to the house and senate committees on ways and means and the joint committee on education, arts and humanities. If the institution fails to achieve the agreed to targeted improvements and timeline, funds appropriated for the institution in the following fiscal year shall be disbursed by the board of higher education to the institution's board of trustees subject to the board's approval. The board shall not be prevented from amending the institutional allocation of any such institution.

#### **In-State Tuition for Immigrant Students**

SECTION 33. Section 9 of said chapter 15A of the General Laws, as most recently amended by section 52 of said chapter 26, is hereby further amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, for the purpose of determining eligibility for in-state tuition rates and fees at public institutions of higher education, except the University of Massachusetts Medical School, an individual, other than a non-immigrant alien within the meaning of paragraph 15 of subsection (a) of Section 1101 of Title 8 of the United States Code, who has attended high school in the commonwealth for 3 or more years and has achieved graduation from a high school in the commonwealth or attained the equivalent thereof, shall be eligible for in-state tuition rates and fees at the University of Massachusetts, or any commonwealth state or community college; but, in the case of an individual who is not a citizen or permanent resident of the United States, the individual shall provide the University of Massachusetts, or the state or community college with an affidavit

stating that the individual has filed an application to become a citizen or permanent resident of the United States, or will file an application at the earliest opportunity the individual is eligible to do so.

### **Higher Education Buying Consortium**

SECTION 34. Section 24A of said chapter 15A, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 6, the words “in the commonwealth.”

### **Department of Early Education and Care**

SECTION 35. The General Laws are hereby amended by inserting after chapter 15C the following chapter:-  
Chapter 15D – Department of Early Education and Care

Section 1. (a) It is hereby declared to be the policy of the commonwealth to assure every child a fair and full opportunity to reach his full potential by providing and encouraging services which maximize a child’s capacity and opportunity to learn, which strengthen family life, and which support families in their essential function of nurture for a child’s physical, social, educational, moral, and spiritual development.

(b) There shall be a board of early education and care, in this chapter called the board. The purposes of the board are as follows:

(1) to consolidate and coordinate resources and public funding streams for early education and care in order to assure the sound and coordinated development of all services to children;

(2) to encourage maximum family choice by ensuring a mixed system of high-quality public and private programs staffed by well-qualified professionals;

(3) to assure parents a decisive role in the planning, operation, and evaluation of programs which aid families in the care of children;

(4) to provide consumer education and accessibility to early education and care resources;

(5) to advance the quality of early education and care programs in order to support the healthy development of children and preparation for their success in school;

(6) to develop a seamless service delivery system with early childhood programs administered by local, state and federal agencies;

(7) to develop and manage an effective data collection system to support the necessary functions of a coordinated system of early education and care to enable accurate evaluation of its impact;

(8) to respect and draw upon family values and cultural heritage;

(9) to establish the administrative framework for, and promote the development of, early education and care services in order to provide that such services, staffed by well-qualified professionals, shall be available in every community for all families which express a need for them;

(10) to assure that family foster care or other residential care is provided only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound development; and

(11) to assure that every child shall in all circumstances be protected against all forms of neglect, cruelty, abuse, and exploitation.

Section 2. There shall be a department of early education and care, hereafter referred to as the department, which shall be under the supervision and control of a board of early education and care.

Section 3. (a) The board shall consist of the secretary of health and human services, the commissioner of education, the chancellor of higher education, and 6 members appointed by the governor. Of the members appointed by the governor, 1 shall be a representative of business or industry, 1 shall be a representative of a labor union selected from a list of 3 nominees provided by the Massachusetts State Labor Council, AFL-CIO, 1 shall be a parent and consumer of early childhood services, 1 shall be a provider of early childhood services, and 1 shall be an early education and care teacher. In making the appointments, the governor shall seek to appoint persons who are from geographically diverse regions of the commonwealth, who are familiar with the differing interests, perspectives and needs of urban, rural and suburban regions, and who reflect the ethnic and racial diversity of the commonwealth’s children. Each of the members chosen shall have a demonstrated interest and commitment to early education and care and a commitment to maximizing family choice by preserving a mixed system of high-quality public and private programs.

The governor shall appoint the chairperson of the board. No appointive member of the board shall be employed by or receive regular compensation from the department of early education and care. Not more than 2 appointive members of the board shall be employed on a full-time basis by an agency of the commonwealth. The

members of the board shall be reimbursed for their necessary expenses incurred in the performance of their duties. The board shall meet not fewer than 10 times annually at the call of the chairman.

Five members shall constitute a quorum, and the affirmative vote of 5 members shall be necessary for an action taken by the board.

Appointed members shall serve for terms of 5 years. Upon the expiration of the term of office of an appointive member of the board, a successor shall be appointed in like manner. No person shall be appointed to serve more than 2 full terms. Prior service on said board for a term of less than 3 years, resulting from an initial appointment or an appointment for the remainder of an unexpired term, shall not be counted as a full term. If a member is absent from any 4 regularly scheduled monthly meetings, exclusive of July and August, in a calendar year, his office as a member of said board shall be deemed vacant. The chairman of the board shall immediately notify the governor that the vacancy exists.

No member of the board shall be found to be in violation of section 6 of chapter 268A for conduct which involves his participation, as a member of the board, in a particular matter before the board which may affect the financial interest of an early education and care program with which he is affiliated; provided, however, that the member, his immediate family or partner has no personal and direct financial interest in the particular matter; and provided, further, that the affiliation is disclosed to the board and recorded in the minutes of the meeting of the board.

Section 4. The board of early education and care shall by a two-thirds vote of all its members appoint a commissioner of early education and care, in this chapter called the commissioner, and may in its discretion by majority vote of all its members remove him. He shall be the secretary to the board and its chief executive officer. The commissioner shall receive a salary to be determined by the board.

Section 5. The board shall oversee the development and implementation of a program of voluntary, universally accessible high-quality early childhood education to all preschool-aged children in the commonwealth, subject to appropriation. The board shall oversee the development and management of a comprehensive evaluation process to improve implementation of said program, establish baseline data, and assess the impact of the program on children's readiness for school. The board shall oversee the development and implementation of a workforce development system designed to support the education, training and compensation of the early education and care workforce, including all center, family child care, infant, toddler, preschool and school-age providers.

## **Transportation Reform V**

SECTION 36. Chapter 16, as so appearing, is hereby amended by striking out section 1, and inserting in place thereof the following sections:-

Section 1. There shall be a department of highways, in sections 1 through 5, inclusive, and section 13 of this chapter called the department.

The department shall:

(a) administer the design, construction, operation and maintenance of the roads and bridges of the commonwealth;

(b) enter into any contracts and agreements necessary or desirable to carry out its purposes;

(c) make, and from time to time revise, regulations for the conduct of the business of the department, and all regulations otherwise required by law;

(d) collaborate with other agencies and authorities as may be appropriate in fields related to transportation, development, public safety and security;

(e) prepare and submit to the governor and the general court an annual report containing in substance the description of organization of the department, reviewing the work of the department, recommending legislation and other action by the governor and the general court, and containing such information relating to highways as may be appropriate, including such information as may be required by the commissioner of administration, and

(f) submit such other reports as the commissioner of administration may require.

Section 1A. (a) The department shall be under the direction, supervision and control of the commissioner. The secretary of transportation shall appoint, with the approval of the governor, the commissioner who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor. At the time of appointment, the commissioner shall have experience in matters relating to transportation infrastructure, including the construction, operation, maintenance or financing of roads or bridges, or other relevant experience. The position of commissioner shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The commissioner shall devote his full time during business hours to the duties of his office. He shall give the state treasurer a bond for the faithful

performance of his official duties in such penal sum and with such sureties as may be approved by the governor. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing this chapter relative to the department and to each division thereof under his control and supervision.

(b) The commissioner shall appoint a secretary, who shall have custody of the official documents and papers of the commission and of the department, and of the official seal of the commission, of which judicial notice shall be taken.

#### **Transportation Reform VI**

SECTION 37. Section 2 of said Chapter 16, as so appearing, is hereby further amended by striking out the fourth sentence.

#### **Transportation Reform VII**

SECTION 38. Section 3 of said Chapter 16, as so appearing, is hereby further amended by inserting, after the word “commissioner”, in line 1, the following words:- , in consultation with the secretary of transportation,

#### **Transportation Reform VIII**

SECTION 39. Section 3A of said Chapter 16, as so appearing, is hereby further amended by striking out the word “commission”, in each place where it appears, and inserting in place thereof the following word:- commissioner.

#### **Transportation Reform IX**

SECTION 40. Said Chapter 16 is hereby further amended by inserting after section 3A the following section:-

Section 3B. (a) There shall be in the department a board of contract appeals, which shall approve or disapprove all claims made under any contract with the department with the exception of claims subject to section 39Q of chapter 30.

(b) The commissioner with the approval of the governor may appoint a person of legal training and experience, who shall be a member of the bar of the commonwealth, to the position of hearing examiner, and may remove him for cause in like manner. The term of the hearing examiner shall be coterminous with the term of the governor. The hearing examiner shall devote full time during business hours to the duties of his position. The position shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of chapter 30. The department or commissioner may refer any dispute concerning contracts, contract specifications or the execution of contracts not subject to the aforesaid section 39Q of chapter 30 to the hearing examiner for a report of the matter including a recommendation as to the disposition of the dispute.

(c) The hearing examiner shall hear all claims by contractors from determinations of the department with the exception of claims subject to section 39Q of chapter 30; and shall, after hearing, render to the commissioner a report of the matter including a recommendation as to the disposition of the claim. The examiner shall at the request of the contractor or of the department or on his own motion summon witnesses and require the production of books and records and take testimony under oath. Such reports shall be maintained as public records in a place and form fully accessible to the public. Any person aggrieved by a decision of the board of contract appeals may bring suit against the commonwealth for recovery of damages based on such claim under the chapter 258.

#### **Transportation Reform X**

SECTION 41. Section 4 of said Chapter 16, as appearing in the 2002 Official Edition, is hereby further amended by striking out the words “under the commission”, in line 2, and inserting in place thereof the following words:- , in consultation with the secretary of transportation,.

#### **Transportation Reform XI**

SECTION 42. Said Chapter 16, as so appearing, is hereby further amended by striking out section 13, and inserting in place thereof the following section:-



Section 13. There shall be within the department an outdoor advertising bureau, for the purpose of regulating and controlling, in the public interest, the erection and maintenance of billboards, signs or other advertising devices. The commissioner shall make an annual report for the preceding calendar year, setting forth the number of permits granted, the number of permits refused, the number of hearings held, the number of illegal signs removed, and other relevant matters, to the general court and to commissioner of administration in January of each year. The commissioner shall promulgate rules and regulations to carry out the purposes of this section.

## **Transportation Reform XII**

SECTION 43. Said Chapter 16 is hereby further amended by striking out section 14.

### **Increased Protection of Vulnerable Elders**

SECTION 44. Section 14 of chapter 19A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "person;" in line 6, the following words:- or the failure, inability or resistance of an elderly person to provide for himself one or more of the necessities essential for physical or emotional well-being without which the elderly person would be unable to safely remain in the community;.

### **Office of Environmental Law Enforcement**

SECTION 45. Section 8 of chapter 21A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "include", in line 103, the following words:- the office of law enforcement,.

### **Title V Intra-Family Transfers**

SECTION 46. Section 13 of said chapter 21A, as so appearing, is hereby amended by inserting after the sixth sentence the following sentence:- The department shall not consider transfers between spouses, between parents and their children, or between siblings as transfers of title requiring an inspection of a system for the treatment and disposal of sanitary sewage below the ground surface.

### **Department Special Projects Permitting and Oversight Fund**

SECTION 47. Subsection (d) of section 18 of said chapter 21A, as so appearing, is hereby amended by adding the following two clauses:-

(6) Notwithstanding the requirements of clauses (1) to (4), inclusive, the department and a permit applicant may agree upon appropriate fees, related funding and schedules for projects meeting the criteria in clauses (1) and (2) or for projects determined by the commissioner to be of significant environmental interest to the commonwealth or that are consistent with sustainable development principles. With input from the advisory committee the department shall establish guidelines for the implementation of this subsection, including ensuring consideration of the allocation of department permitting resources and whether the project serves a significant public interest, and offers opportunities to restore, protect, conserve or enhance natural resource. All amounts received by the department for these projects shall be deposited in the fund established in clause (7) and may be expended by the department in accordance with the requirements of clause (7).

(7) There shall be established and set up on the books of the commonwealth a separate trust to be known as the Special Projects Permitting and Oversight Fund. There shall be credited to the fund all amounts received by the department from permit applicants for projects identified in clause (6). All amounts credited to the fund may be expended by the department without further appropriation for the purpose of permitting, technical assistance, compliance, other related activities associated with said projects, including all direct and indirect costs of department personnel or contractors. With agreement of the project applicants, any amount credited to the fund in excess of the amount expended to complete the department's permitting, technical assistance, compliance, or other related activities associated with said projects, may be retained in the fund. The funds may be expended by the department to support projects in economically distressed areas. An economically distressed area is an area or municipality that has been designated as an economic target area, or that would otherwise meet the criteria for such designation under section 3D of chapter 23A. The department's expenditure of the funds shall be in accordance with relevant state law applicable to the expenditure and record keeping of state funds and shall be subject to audit by the state auditor.

### **Hazardous Waste Site Audits**

SECTION 48. Section 3A of chapter 21E of the General Laws, as so appearing, is hereby amended by striking out subsection (o) and inserting in place thereof the following subsection:-

(o) The department shall audit a statistically significant representative sample of all sites, for which an annual compliance assurance fee is required to be paid pursuant to section 3B, determined by the department to be of a scope and character to reasonably ensure that response actions are performed in compliance with the provisions of this chapter and the Massachusetts contingency plan. In addition, the department may establish other audit targets or approaches for categories of persons or response actions or sites, as defined pursuant to subsection (d) of section 3, based on the department's determination of proper level of oversight for each category.

### **Hazardous Waste Annual Compliance Assurance Fees**

SECTION 49. Section 3B of said chapter 21E, as so appearing, is hereby amended by striking the third paragraph and inserting in place thereof the following paragraph:-

Notwithstanding any general or special law to the contrary, the department may, by regulation, establish annual compliance assurance fees for sites or vessels, payable by all persons, excluding agencies of the commonwealth, who are, or are required to be, performing response actions at such sites or vessels, or who have been notified by the department that they are potentially liable for such sites or vessels under section 5, for each year or fraction thereof in which such response actions are performed or required to be performed, from the time that notice is first required to be given to the department pursuant to section 7 until the time that a level of no significant risk has been achieved in accordance with subsection (g) of section 3A; provided, that the fees shall not apply to sites or vessels for which a level of no significant risk has been achieved within a short duration in response to a sudden release or threat of release of oil or hazardous material. The fees shall be based on the department's cost for inspection, auditing, enforcement and compliance activities.

### **Hazardous Waste Response I**

SECTION 50. Said section 3B of said chapter 21E, as so appearing, is hereby further amended by striking out, in line 49, the words "carrying out such response action" and inserting in place thereof the following:- owing the fee.

### **Hazardous Waste Response II**

SECTION 51. Said section 3B of said chapter 21E, as so appearing, is hereby further amended by striking out, in lines 74 and 75, the words "for those response actions at or".

### **Department of Public Safety Name Change II**

SECTION 52. Chapter 22 of the General Laws is hereby amended, by striking out section 1, as so appearing, and inserting in place thereof the following section:-

Section 1. There shall be a department of inspection and regulation under the supervision and control of a commissioner of inspection and regulation.

### **Department of Public Safety Name Change III**

SECTION 53. Section 10A of said chapter 22, as so appearing, is hereby amended by striking out, in lines 1, 4 and 22, the words "public safety", each time they appear, and inserting in place thereof, in each instance, the following words:- inspection and regulation.

### **Department of Public Safety Name Change IV**

SECTION 54. Section 11A of said chapter 22, as so appearing, is hereby amended by striking out, in line 1, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Department of Public Safety Name Change V**

SECTION 55. Section 13A of said chapter 22, as so appearing, is hereby amended by striking out, in line 1, the words "public safety" and inserting in place thereof the following words: - inspection and regulation.

#### **Department of Public Safety Name Change VI**

SECTION 56. Section 15B of said chapter 22, as so appearing, is hereby amended striking out, in line 1, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Department of Public Safety Name Change VII**

SECTION 57. Section 20 of said chapter 22, as so appearing, is hereby amended by striking out, in line 1, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Requiring a DNA Sample before Release from Prison**

SECTION 58. Section 3 of chapter 22E of the General Laws, as appearing in the 2002 Official Edition, as most recently amended by chapter 107 of the acts of 2003, is hereby amended by striking out, in the first sentence, the following words: "shall, within 1 year of such conviction or adjudication, submit a DNA sample to the department, which shall be collected by a person authorized under section 4, in accordance with regulations or procedures established by the director" and inserting in place thereof the following:- shall submit a DNA sample to the department within 1 year of such conviction or adjudication or, if incarcerated, prior to release from custody, whichever occurs first. Such sample shall be collected by a person authorized under section 4, in accordance with regulations or procedures established by the director.

#### **Department of Workforce Development Correction II**

SECTION 59. Section 9J of chapter 23 of the General Laws, as most recently amended by section 555 of chapter 26 of the acts of 2003, is hereby further amended by striking out the first sentence and inserting in place thereof, the following 2 sentences:- The secretary, in consultation with the director of workforce development, may adopt, amend, alter or repeal, and shall enforce, all rules, regulations and orders necessary for the administration and enforcement of chapter 151A. The secretary shall seek the approval of the director of workforce development if the changes may affect the operations of the free public employment offices.

#### **Department of Workforce Development Correction III**

SECTION 60. Section 11E of said chapter 23, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- There shall be in the department of workforce development an apprenticeship council, to consist of 8 members, 6 of whom shall be appointed by the director of workforce development with the approval of the governor, 1 of whom shall be the director of workforce development or his successor, ex officio, and 1 of whom shall be the associate commissioner of career and technical education or his successor, in the department of education, ex officio.

#### **Department of Workforce Development Correction IV**

SECTION 61. Section 11H of said chapter 23, as so appearing, is hereby amended by striking out the definition "Director" and inserting in place thereof, the following definition:-

"Director", the director of workforce development.

#### **Department of Workforce Development Correction V**

SECTION 62. Said section 11H of said chapter 23, as so appearing, is hereby further amended by striking out the definition "Division" and inserting in place thereof, the following definition:-

"Division", the division of apprentice training in the department of workforce development.

### **Department of Workforce Development Correction VI**

SECTION 63. Section 3 of chapter 23H of the General Laws, as appearing in section 571 of chapter 26 of the acts of 2003, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Within the department, there shall be the following agencies and divisions: a division of apprentice training, which shall administer sections 11E to 11W, inclusive, of chapter 23; a division of career services, which shall administer section 6 of this chapter; a division of unemployment assistance that shall administer chapter 151A; and other divisions as the director considers necessary to administer and enforce the department's other obligations.

### **Department of Workforce Development Correction VII**

SECTION 64. Section 6 of said chapter 23H, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) The director of workforce development shall administer the system of free public employment offices established in sections 160 to 168A, inclusive, of chapter 149, through the division of career services.

### **Workforce Training Loan Program**

SECTION 65. Said section 6 of said chapter 23H of the General Laws, as so appearing, is hereby further amended by adding the following subsection:-

(d) The Massachusetts Educational Financing Authority may provide direct loans upon guarantee consistent with its mandate and to act as an application and loan servicing agent for funds made available to it from other sources both public and private in order to fund loans coordinated through the one-stop career centers for training providers and programs outside its mandate. The director shall establish performance measures to ensure that loans under this subsection are directed to industry recognized credentialing or certification programs and will result in high rates of placement and positive career outcomes for participating workers.

### **Department of Workforce Development Correction VIII**

SECTION 66. Said chapter 23H is hereby amended by adding the following section:-

Section 8. The director of workforce development shall administer and enforce the unemployment insurance system and the medical security trust as established in chapter 151A. The director, with the approval of the secretary, may assign personnel, responsibilities and duties under federal law to any office or division within the department in order to maximize efficiency of resources and service delivery.

### **Energy Efficiency Program Assessment**

SECTION 67. Chapter 25A of the General Laws is hereby amended by inserting after section 11G, as appearing in the 2002 Official Edition, the following section:-

Section 11H. (a) The division of energy resources may make an assessment against each electric and gas utility company doing business in the commonwealth. This section shall not apply to municipally owned electric and gas companies.

(b) The assessments shall be made to finance activities undertaken by the division in accordance with section 11G related to oversight and coordination of ratepayer funded programs for energy efficiency, energy conservation, and demand reduction programs.

(c) The assessment shall be made at a rate determined and certified annually by the commissioner as sufficient to reimburse the commonwealth for funds appropriated by the general court for activities of the division related to the oversight and coordination of programs for energy efficiency, energy conservation, and demand reduction. From July 1, 2004 to December 31, 2004, inclusive, the assessment shall not exceed an amount equal to 0.375 per cent of the total annual mandatory charge collected by each utility company under section 19 of chapter 25 in the case of electric companies, or 0.375 per cent of the efficiency budgets as approved by the department of telecommunications and energy or otherwise required by law in the case of gas companies, as applicable. Beginning January 1, 2005, the assessment shall not exceed an amount equal to 0.75 per cent of the total annual mandatory charge collected by each utility company under section 19 of chapter 25 in the case of electric companies, or 0.75 per cent of the efficiency budgets as approved by the department of telecommunications and energy or otherwise required by law in the case of gas companies, as applicable. Assessments made under this section shall be charged by the utility companies against the revenues so collected under section 19 of chapter 25 or as the revenues are

approved by the department of telecommunications and energy or otherwise required by law, as applicable. Each company shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the division.

### **Energy Related Allowances and Credits**

SECTION 68. Said chapter 25A is hereby amended by inserting at the end thereof the following new section:-

Section 13. (a) Notwithstanding any general or special law to the contrary, the division may apply for, receive, retain, redeem, sell or transfer any energy conservation credits, renewable energy certificates or credits, emissions credits, or energy reduction allowances earned or received by the commonwealth including but not limited to allowances awarded through the public benefit set-aside provisions of the NOx Allowance Trading Program implemented by the department of environmental protection.

(b) There shall be established upon the books of the commonwealth a separate fund to be known as the Division of Energy Resources Credit Trust Fund. There shall be credited to said fund all amounts received through the redemption or sale of such certificates, credits and allowances specified in this section and any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust and shall be available for expenditure, subject to appropriation, by the division of energy resources for activities of the division related to the development, oversight and implementation of programs for energy reliability, renewable energy, public procurement of energy and energy efficiency, and climate change. Any unexpended balance in the fund at the close of a fiscal year shall remain in the fund and shall be available for expenditure in the following fiscal year; provided however, that the fund shall not be in deficit at the end of any state fiscal year.

### **Children's and Seniors' Fund Revenue**

SECTION 69. Section 2FF of chapter 29 of the General Laws, as amended by sections 143 and 144 of chapter 26 of the acts of 2003, is hereby further amended by striking out, in clause (a), the words "section seven A and seven B of."

### **Children's and Seniors' Fund Balance**

SECTION 70. Said section 2FF, as so amended, is hereby further amended by adding at the end of the second paragraph the following sentence:-

The amount of any positive balance in the fund at the end of the fiscal year, exclusive of funds held in reserve pursuant to this paragraph, shall be transferred to the General Fund.

### **Workforce Training Fund Reform**

SECTION 71. Section 2RR of said chapter 29 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking section 2RR entirely and inserting in place thereof the following section 2RR: -

Section 2RR. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Workforce Training Trust Fund, in this section called the Fund. There shall be credited to the Fund the workforce training contributions required by section 14L of chapter 151A. The director of the department of workforce development shall ensure that the principal and interest of the Fund are used only for the purposes of this section. In each fiscal year, the director shall so expend not less than \$18,000,000 or whatever lesser total amount is credited to the Fund.

(b) Subject to appropriation, the director shall make expenditures from the Fund for the following purposes:

(1) To provide grants to employers, employer groups, labor organizations and training providers for projects to provide education and training to existing employees and newly hired workers. In determining who shall receive grants, the director shall consider the following criteria:

- (i) whether the project will increase the skills of low-wage, low-skilled workers;
- (ii) whether the project will create or preserve jobs at wages sufficient to support a family;
- (iii) whether the project will have a positive economic impact on a region with high levels of unemployment or a high concentration of low-skilled workers;

(iv) whether the employer has made a commitment to provide significant private investment in training during the duration of the grant and after the grant has expired;

(v) whether the project will supplement, rather than replace, private investments in training;

(vi) whether the employer is a small business that lacks the capacity to provide adequate training without such assistance;

(vii) whether the project will provide residents of the commonwealth with training for jobs that could otherwise be filled only by residents of other nations;

(viii) whether the project is consistent with the workforce development blueprint prepared by the local workforce investment board; and

(ix) whether the employer has recently or plans to locate its business in the commonwealth and employ residents of the commonwealth who will benefit from training.

(2) To provide technical assistance to increase training opportunities available to employees. The director may provide this direct technical assistance by using existing institutions such as local workforce investment boards, community colleges, labor organizations, administrative entities for service delivery areas under the federal Workforce Investment Act, or its successor statute, and other entities that have expertise in providing technical assistance regarding employee training or with employees of the departments of labor and workforce development or of the commonwealth corporation. Such expenditures shall not exceed \$3,000,000 each year and the director shall demonstrate that each dollar expended generates not less than \$5 in private investment in job training.

(c) The director, in consultation with the secretary of economic development, shall adopt regulations to carry out the purposes of this section, including the criteria set forth in paragraph (1) of subsection (b). The regulations shall provide for a rolling applications process and shall allow employers with plans to locate in the commonwealth and employ commonwealth residents to apply for grants. The director may contract with a private organization to carry out some or all of the director's duties provided in this section.

The board may require a match or co-investment from participating organizations; provided, however, that in determining the amount of any match, the board shall establish different requirements for organizations based on the size of the organization, its profit or not-for-profit status and financial capacity.

(d) Not later than September 1 of each year, the director shall file a report in writing with the joint committee on commerce and labor and the house and senate committees on ways and means detailing the grants made in the fiscal year ending on the preceding June 30, including for each grant the employer or entity receiving the grant, the amount of the grant, the number of employees trained and the nature of the training provided, together with such recommendations and additional information as the commissioner considers appropriate.

(e) Documentary materials or data made or received by an employee of the department of workforce development, or previously by the division of employment and training, to the extent that such materials or data consist of trade secrets or commercial or financial information regarding the operation of a business conducted by an applicant for a grant from the fund established by this section, shall not be public records and shall not be subject to section 10 of chapter 66.

(f) The director shall, in accordance with section 328 of chapter 127 of the acts of 1999, prepare a performance evaluation of the workforce training grants awarded under this section. The evaluation shall assess the effectiveness of each grant awarded in terms of the 1) development of employee skills; 2) increase in employee wages; 3) improvement in employee retention rates; 4) improvement of employee productivity; 5) impact on employer's business and 6) impact on regional economy, including reduction of regional unemployment levels. The director shall require, as a condition of receiving a grant under this section, employers to provide, within a time frame following the end of the grant period as established by the director, such information and data determined by the director to be necessary to complete the performance evaluation.

(g) The director shall make no grant under this section to any person or entity from the Fund, nor shall any technical assistance be provided by the department out of the proceeds of the Fund, to any person or entity unless the person or entity applies for and receives a certificate of tax in good standing with the department of revenue with respect to all tax types for which it should be registered and for which it is obligated to file reports or returns. A certified copy of the certificate shall be presented to the director before the issuance of any grant under this section before the department's providing any technical assistance to the person or entity.

(h) There is hereby established a board to be known to the proposed section 35 of chapter 10 of the General Laws, as the Workforce Training Fund Advisory Board of consisting of 9 members, who are citizens of the commonwealth, to be appointed by the governor. Three members shall be persons representing businesses or employers; 3 shall be persons representing employees or employee of labor organizations, 2 of whom shall be selected from a list of 5 recommended by the President of the Massachusetts AFL-CIO; and 3 shall be persons representative of the public, 2 of whom shall have expertise or experience in workforce training and 1 of whom shall

represent a non-profit workforce training provider. The governor shall designate as chairman of the advisory board 1 of the members appointed as representative of the public. Members shall serve for a term of 6 years. Of the members originally appointed, 1 employer representative and 1 employee representative shall serve for a term of 4 years, and 1 employer representative and 1 employee representative shall serve for a term of 6 years; and thereafter, as their terms expire, the governor shall appoint members for terms of 6 years. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. All members shall serve until the qualification of their respective successors. Members shall serve without compensation. The advisory board shall advise the director of the department of workforce development on the administration of the workforce training fund grant program, including but not limited to reviewing and making recommendations on grant requirements and selection criteria and reviewing grant applications and making recommendations about grant awards. The advisory board shall, from time to time, submit recommendations to the legislature on any legislative changes it deems necessary for the successful operation of the program.

### **Errata to House 1 Recommendations**

SECTION 72. Section 7H of said chapter 29, as so appearing, is hereby amended by inserting after the word “decreased”, in line 53, the following words:— , or that appropriations or statutory amendments that would provide funding to support recommended levels of appropriations have materially changed.

### **Statutory Allotment of Funds**

SECTION 73. Section 9B of said chapter 29, as so appearing, is hereby amended by striking out, in line 18, the word “fifteen” and inserting in place thereof the following figure:— 60.

### **Notification for Operating Expenditures**

SECTION 74. Section 27B of said chapter 29, as so appearing, is hereby amended by inserting after the word “four”, in line 7, the following words:— , and at least 30 days written notification has been given to the house and senate committees on ways and means.

### **Health Care Security Trust Fund Transfer**

SECTION 75. Section 3 of chapter 29D of the General Laws, as amended by sections 7 and 7A of chapter 300 of the acts of 2002, is hereby further amended by striking subsection (c) and inserting in place thereof the following subsection:-

(c) The comptroller shall promptly certify to the executive office for administration and finance, the house and senate committees on way and means, the joint committee on health care and the advisory committee on health care and tobacco control established pursuant to section 5, the amount and date when any payments are made pursuant to the master settlement agreement in the tobacco action and any other payments are made or credited to said fund. In fiscal year 2005, and thereafter, the comptroller shall transfer the total amount of payments from the master settlement agreement from the Health Care Security Trust Fund to the General Fund not later than 15 days after the certification of said payments.

### **Department of Public Safety Name Change VIII**

SECTION 76. Section 50 of chapter 30 of the General Laws, as so appearing, is hereby amended by striking out, in line 8, the words "public safety" and inserting in place thereof the following:- inspection and regulation.

### **Pension Reform I**

SECTION 77. Section 59 of chapter 30, as so appearing, is hereby amended by inserting after the word “him”, in line 26, the following words:-

, subject to the provisions of section 15 of chapter 32. The employer of any person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

### **Requiring Attorney Consent to Reassignment**

SECTION 78. Section 65 of said chapter 30 of the General Laws, added by section 173 of chapter 26 of the acts of 2003, is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:—

(c) Instead of making the certificate under clause (1) of subsection (a), the governor's chief legal counsel may, upon written request by the head of any department, agency, board or commission, with the written approval of the head thereof and with the voluntary written consent of the attorney, provide specific legal services for the requesting department, agency, board or commission for a period not exceeding 3 months but subject to renewal with the voluntary written consent of the attorney. The assignment shall be subject to any applicable collective bargaining agreement. The certification required of the comptroller by the fourth paragraph of section 31 of chapter 29 shall not be required in instances of the assignment by the governor's chief legal counsel.

### **Public Bidding Notice**

SECTION 79. Clause (5) of subsection (c) of section 5 of chapter 30B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the words “receipt of bids” in line 31, the following words:- on a public internet website of either the government body or of the commonwealth or.

### **Pension Reform II**

SECTION 80. Section 1 of chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of “Accumulated additional deductions” the following new definition:-

“Accumulated assumed actuarial deductions”, the sum of the amount of the regular deductions and the actuarial assumed interest thereon that would have been credited to any member's account in the annuity savings fund of any system had actuarial assumed interest been credited rather than regular interest.

### **Pension Reform III**

SECTION 81. Said section 1 of said chapter 32, as so appearing, is hereby further amended by inserting after the definition of “Accumulated total deductions” the following new definition:-

“Actuarial assumed interest”, interest that would be credited to a member's account in the annuity savings fund of any system or to his account in the special fund for military service credit, as provided in subdivision (6) of section 22, except that for any calendar year beginning after December 31, 1983, “actuarial assumed interest” shall be interest that would have been so credited using a rate equal to a system's actuarial assumed rate of return on investments, as determined from time to time by the commission, rather than regular interest.

### **Pension Reform IV**

SECTION 82. Said section 1 of said chapter 32, as so appearing, is hereby further amended by striking the definition of “Actuarial equivalent” and inserting in place thereof the following definition:-

“Actuarial equivalent”, any benefit of equal value when computed upon the basis of a mortality table to be selected by the actuary and an interest rate determined by the actuary.

### **Pension Reform V**

SECTION 83. Said section 1 of said chapter 32, as so appearing, is hereby further amended by inserting at the end of the definition of “Regular compensation” the following paragraph:-

Notwithstanding any provision of this chapter to the contrary, after December 31, 2004, regular compensation for any member shall not include salary, wages or other compensation in whatever form in any calendar year in excess of \$150,000. Beginning January 1, 2005, the actuary shall annually adjust said amount of regular compensation in accordance with paragraph (f) of subdivision (3) of section 21. The limitations of this paragraph shall not apply to members who were members in service on or before December 31, 2004. A state agency may petition the state board of retirement for a waiver from this paragraph when the board determines that this paragraph would result in a competitive disadvantage for the commonwealth.

### **Pension Reform VI**



SECTION 84. Sections 3 and 4 of said chapter 32, as so appearing, are hereby amended by striking out the words “accumulated regular deductions” wherever they occur and inserting in place thereof the following:- accumulated assumed actuarial deductions.

#### **Pension Reform VII**

SECTION 85. Said sections 3 and 4 of said chapter 32, as so appearing, are hereby amended by striking out the words “regular interest” wherever they occur and inserting in place thereof the following:- actuarial assumed interest.

#### **Pension Reform VIII**

SECTION 86. Said section 4 of said chapter 32, as so appearing, is hereby further amended by striking the word “year”, in each place it appears in paragraph (a) of subsection (1), and replacing it in each instance with the following word:- month.

#### **Pension Reform IX**

SECTION 87. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out the word “eighteen”, in line 88, and inserting in place thereof the following words:- 18, or, if over said age and under age 22, is a full-time student at an accredited educational institution,.

#### **Pension Reform X**

SECTION 88. Said section 7 of said chapter 32, as so appearing, is hereby further amended by striking out the word “twenty-one”, in line 97 and inserting in place thereof the figure:- 22.

#### **Pension Reform XI**

SECTION 89. Section 9 of said chapter 32, as so appearing, is hereby amended by striking out the word “eighteen”, in line 55, and inserting in place thereof the following:- 18, or are over said age and under age 22 and full-time students at accredited educational institutions,.

#### **Pension Reform XII**

SECTION 90. Said section 9 of said chapter 32, as so appearing, is hereby further amended by striking out the word “eighteen”, in line 60, and inserting in place thereof the following:- 18, or is over said age and under age 22 and is a full-time student at an accredited educational institution,.

#### **Pension Reform XIII**

SECTION 91. Said section 9 of said chapter 32, as so appearing, is hereby further amended in paragraph (c) of subdivision (2) by inserting at the end of said paragraph (c) the following new sentences:-

The words “full-time student” shall mean a child who is in full-time attendance in an accredited educational institution offering full-time courses of study equivalent to or higher than secondary school study. The words “accredited educational institution” shall mean any school, college, or university that is licensed, approved or accredited, as the case may be, in the state in which it is located.

#### **Pension Reform XIV**

SECTION 92. Said section 9 of said chapter 32, as so appearing, is hereby further amended by striking out the word “twenty-one”, in each of lines 73 and 79, and inserting in each place thereof the figure:- 22.

#### **Pension Reform XV**

SECTION 93. Section 12 of said chapter 32, as so appearing, is hereby amended in subsection (1) by striking the second sentence and inserting in place thereof the following sentences:-

Any member who is retired for disability under the provisions of section 6, section 7 or who is retired under subdivision (2) of section 26, may elect to have his allowance paid in accordance with the terms of option (a), option (b), or option (c); provided, however, that in the event that the surviving eligible beneficiary of the member under option (c) is eligible for a benefit under section 9, the beneficiary shall elect to receive either a benefit pursuant to option (c) or a benefit pursuant to said section 9, but in no event shall the beneficiary be eligible for both benefits.

When at the time of a member's death there exist both a beneficiary under option (c) and a survivor entitled to a benefit under Section 9, who are 2 different individuals, the benefits shall be divided as follows if not otherwise divided pursuant to a valid court order: the smaller of the 2 benefits shall cease and the amount of the larger of the 2 benefits shall be divided between the Section 9 survivor and the option (c) beneficiary; provided that the option (c) beneficiary shall receive an amount equal to up to one-half of the total benefits to be paid, but not to exceed the benefit he would have received under option (c); provided further that the Section 9 survivor shall receive the balance of the benefits to be paid. Each share of the benefits to be paid shall separately be eligible for subsequent adjustments pursuant to sections 102 and 103.

#### **Pension Reform XVI**

SECTION 94. Section 12B of said chapter 32, as so appearing, is hereby amended by striking out the word "twenty-one", in lines 36 and 37, and inserting in place thereof the figure:- 22.

#### **Pension Reform XVII**

SECTION 95. Section 15 of said chapter 32, as so appearing, is hereby amended by adding the following subsection:-

(5) If the attorney general or any district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of said member's rights to a pension, retirement allowance, or a return of his accumulated total deductions pursuant to this chapter, sections 58 or 59 of chapter 30 or section 25 of chapter 258A, he shall immediately notify the commission of such conviction.

#### **Pension Fund Filing Date**

SECTION 96. Subsection (1) of section 22C of chapter 32 of the General Laws, as most recently amended by section 178 of said chapter 26, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:— The first funding schedule shall be filed by the commissioner not later than March 1, 1988 and subsequent schedules shall be prepared pursuant to this section relating to the establishment of funding schedules and filed triennially on or before January 15.

#### **Pension Funding Schedule**

SECTION 97. Said subsection (1) of said section 22C of said chapter 32, as amended by section 179 of chapter 26 of the acts of 2003, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:—

Notwithstanding any general or special law to the contrary, appropriations or transfers made to the commonwealth's pension liability fund in fiscal years 2005 to 2007, inclusive, shall be made in accordance with the following funding schedule: \$1,216,936,000 in fiscal year 2005, \$1,274,675,000 in fiscal year 2006, and \$1,335,176,000 in fiscal year 2007.

#### **Pension Reform XVIII**

SECTION 98. Section 26 of said chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the word "eighteen", in line 51, and inserting in place thereof the following:- 18, or, if over said age and under age 22, who is a full-time student at an accredited educational institution.,

#### **Pension Reform XIX**

SECTION 99. Said section 26 of said chapter 32, as so appearing, is hereby further amended by striking out the word "twenty-one", in line 57, and inserting in place thereof the figure:- 22.

## **Pension Reform XX**

SECTION 100. Section 100 of said chapter 32, as so appearing, is hereby amended by striking out the word “twenty-one”, in line 32, and inserting in place thereof the figure:- 22.

## **Pension Reform XXI**

SECTION 101. Said chapter 32 is hereby further amended by adding the following new section:-

Section 105. (a) Any member retired under the provisions of section 5 shall be eligible to be reinstated in a retirement system established under this chapter, if the retired member repays to the system from which he retired an amount equal to the total amount of any retirement allowance received by the retired member, together with actuarial assumed interest thereon. Such payment shall be made in one lump sum or in installments as the board shall prescribe. Upon such reinstatement, regular deductions shall be made from regular compensation pursuant to paragraphs (b) and (b1/2) of subdivision (1) of section 22, for the purposes of which, the member’s date of entry into service shall be the date such member waived his retirement allowance or the date of reinstatement, whichever occurs earlier. Upon completion of such payment, the member shall be entitled to creditable service for all periods of service for which deductions were made from the member’s regular compensation. For purposes of this section, the term “reinstatement service” shall mean a member’s period of full-time employment after reinstatement in a retirement system under this section.

(b) If the member shall have less than 5 years reinstatement service, upon retirement, said member shall receive a refund of the payments actually made to the system under this section. The member shall not be entitled to any creditable service for the reinstatement service, nor shall said member be eligible to establish any additional creditable service under any provision for make up payments or other payments.

(c) If the member shall have 5 years or more of reinstatement service, the member shall be entitled to creditable service resulting from his reinstatement service, upon the completion of payments required under subsection (a) and payment of regular deductions under section 22 for the reinstatement service. In the event that a retirement allowance becomes effective for the member before the completion of payments under subsection (a), the member shall be entitled to credit for that proportion of reinstatement service as the board shall prescribe, in addition to any credit for service rendered prior to the date of reinstatement; provided that the member would have otherwise been eligible for said prior service.

## **Advanced Technologies in Health Care Trust Fund I**

SECTION 102. Chapter 40J of the General Laws, as amended by chapter 141 of the Acts of 2003, is hereby further amended by inserting after section 4F thereof the following section:-

Section 4G. (a) There is hereby established and set up on the books of the corporation a separate trust fund to be known as the Massachusetts Advanced Technologies in Healthcare Trust Fund, hereinafter referred to as the fund. The corporation shall hold the fund in an account or accounts separate from the other funds administered by the corporation pursuant to the second and third paragraphs of section 5 as they apply to the center fund in the corporation, but which otherwise shall apply to the fund, and section 4E, as it applies to the renewable energy trust fund. There shall be credited to the fund any income derived from the investment of amounts credited to the fund, and from any royalties generated as a result of any awards of monies from the fund. All amounts credited to the fund shall be held in trust and used solely for activities and expenditures consistent with the public purpose of the fund as set forth in subsection (b); but, any monies that remain in the fund on the fifth anniversary of the effective date of this act and which have not been committed on a binding basis for expenditure, as well as any amounts that are received by the corporation after the anniversary date and that otherwise would have been credited to the fund pursuant to this subsection, shall be returned promptly to the Healthcare Security Trust Fund.

(b) The board may draw upon the fund for the public purpose of supporting the identification, development, refinement, use and application of advanced technologies in healthcare by health care providers, institutions and companies located in the commonwealth, including but not limited to the areas of biomedical research and education, health care delivery, medical devices, biotechnology, pharmaceuticals, medical error reduction systems and information technology, including but not limited to the development of the so-called bio-grid, in order to generate the maximum economic and public health and safety benefits over time to the citizens and economy of the commonwealth, including but not limited to lowering of healthcare costs and improving healthcare quality.

(c) Public interests to be advanced through the board's actions shall include, but not be limited to, the following:

(1) the development, increased use, and affordability of advanced technologies in healthcare in the commonwealth;

(2) the protection and improvement of the health of the citizens of the commonwealth through the provision of advanced technologies in healthcare on an affordable basis, and in a manner that enhances the health care delivery system and reduces overall healthcare costs;

(3) the delivery to all citizens of the commonwealth of as many benefits as possible created as a result of fostering practical applications for technical advances in the biomedical and related healthcare disciplines;

(4) the creation of additional employment opportunities in the commonwealth through the development and use of advanced technologies in healthcare;

(5) the stimulation of increased public and private sector investment in, and competitive advantage for, advanced technologies in healthcare and related enterprises, institutions, and projects in the commonwealth;

(6) the implementation of medical error reduction systems including systems to reduce medication errors;

(7) the implementation and provision of telemedicine and telehealth services to home care patients and assisted living or nursing home residents; and

(8) the stimulation of entrepreneurial activities in these and related enterprises, institutions, and projects.

(d) In furtherance of these and other public purposes and interests, the board may expend monies from the fund to make grants, including matching grants, contracts, loans, equity investments, financial or debt service obligation assistance, or to take any other actions, in the forms, under the terms and conditions and pursuant to the selection procedures as the board considers appropriate and otherwise in a manner consistent with good business practices; provided, however, that the board shall generally employ a preference for competitive procurements which maximize the ability to leverage the commitment of federal or private funds and seek a reasonable return to the fund in the form of royalty payments or other income streams; provided, further, that the board shall endeavor to leverage the full range of the resources, expertise, and participation of other state and federal agencies and instrumentalities in the design and implementation of programs under this section, including but not limited to the creation of not-for-profit health information technology corporations to be matched with any federal or other funds designated for the purpose of establishing a health information technology infrastructure revolving loan fund for distribution as loans or grants to eligible applicants for healthcare information technology infrastructure design, development, acquisition, installation, improvement and operation; and provided, further, that the board has determined and incorporated into the minutes of its proceedings a finding that such actions are calculated to advance the public purpose and public interests set forth in this section, including, but not limited to, the following:

(1) the growth of the advanced technologies in healthcare industry;

(2) the enhancement of the availability of advanced technologies in healthcare on an affordable basis to citizens in the commonwealth;

(3) public education and training regarding advanced technologies in healthcare;

(4) product and market development of advanced technologies in healthcare;

(5) pilot and demonstration projects and other activities designed to increase the use and affordability of advanced technologies in healthcare by citizens in the commonwealth;

(6) the provision of financing in support of the development and application of related technologies at all levels, including, but not limited to, basic and applied research and commercialization activities; and

(7) the aggregate purchasing and provision of equipment, training and software to health care providers to implement electronic prescribing programs, computerized physician order entry systems in the ambulatory and in-patient settings and comprehensive practice management systems to reduce errors, increase efficiencies and improve standards of care. In making investments, the board may consider the inclusion of participation of the fund, where feasible in the future economic growth of the institutions, organizations, and enterprises in which the investment is made.

The board shall, in consultation with the advisory committee established pursuant to subsection (h) and such other advisors and consultants as the board may from time to time retain, adopt a detailed plan for the application of the fund in support of the design, implementation, evaluation, and assessment of an advanced technologies in healthcare program for the commonwealth, subject to periodic revision by the board, that ensures that the fund shall be employed to provide financial and non-financial resources to overcome barriers facing emerging advanced technologies, and institutions and projects developing or using such technologies, in a prudent manner consistent with the public purposes and interests set forth in this section. The plan may consist of the following 4 components:

(1) "product and market development" to establish a foundation for growth and expansion of the commonwealth's advanced technologies in healthcare, and related enterprise, institutions and projects, including pilot and demonstration projects, production incentives, and other activities designed to increase the development, production, use and affordability of advanced technologies in healthcare in the commonwealth;

(2) "training and public information" to allow for the development and dissemination of complete, objective, and timely information, analysis, and policy recommendations related to the advancement of the public purposes and interests of the fund;

(3) "investment" to support the growth and expansion of advanced technologies in healthcare, and related enterprises, institutions, and projects; and

(4) "research and development" within the commonwealth on advanced technologies in healthcare matters.

The plan shall specify the expenditure of monies from the fund to each of these component activities.

(e) Subject to the approval of the board, investment activity of monies from the fund may consist of the following: (1) an equity fund, to provide risk capital to advanced technologies in healthcare enterprises, institutions, and projects; (2) a debt fund, to provide loans to advanced technologies in healthcare enterprises, institutions, projects, intermediaries, providers, and users; and (3) a market growth assistance fund, to be used to attract private capital to the equity and debt funds. To implement these investment activities, the corporation may retain, through a bid process, a public or private sector investment fund manager or managers, who shall have knowledge and experience in fund management and possess related skills in advanced technologies in healthcare and related technologies development, to direct the investment activity described herein and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; if the capital is appropriately segregated. The manager or managers, subject to the approval of the board, shall be authorized to retain necessary services and consultants to carry out the purposes of the fund. The manager or managers shall develop a business plan to guide investment decisions, which shall be approved by the board before any expenditures from the trust fund and which shall be consistent with the plan for the fund as adopted by the board.

(f) The use by the corporation of monies to implement this section shall be considered an essential governmental function. Notwithstanding any general or special law to the contrary, subsection (a) of section 4A shall apply to expenditures made from the funds established pursuant to sections 4E and 4F; provided, however, that no such expenditure shall be deemed to involve a capital facility project; provided further, that no lease or license executed in furtherance of the public purpose and interests of the fund shall exceed 30 years in duration, and the duration and terms shall be developed in a manner consistent with good business practices; and provided further, that the corporation shall take no action which contravenes the commonwealth's reversionary interest in any of its real property.

Subsection (k) of section 4 shall not apply to disbursements from the fund.

(h) (1) The chairman of the board shall, from recommendations submitted jointly by the executive director of the Massachusetts Technology Park Corporation and the executive director of the Massachusetts Health and Educational Facilities Authority, appoint an advisory committee to assist the corporation in matters related to the fund and in the implementation of the provisions of this section. The advisory committee shall include not more than 15 individuals with an interest in matters related to the general purpose and activities of the fund and the knowledge and experience in at least 1 of the following areas: patient safety and medical error reduction, biomedical research and education, health care delivery, medical devices, biotechnology, pharmaceuticals, information technology, or the concerns of health care providers or health care users. The board shall consult with the advisory committee in discharging its obligations under this section.

(2) Advisory committee members shall serve without compensation, but each committee member shall be entitled to reimbursement for actual and necessary expenses reasonably incurred in the performance of official duties. The advisory committee shall meet at least 4 times in each year.

(3) Chapter 268A shall apply to advisory committee members; but if the corporation proposes to purchase from, sell to, borrow from, contract with, award monies from the fund to, or otherwise deal with any organization or enterprise in which an advisory committee member is in any way interested or involved, such interest or involvement must be disclosed by such member to the advisory committee and the board in advance and recorded in the minutes of the proceedings of the corporation; and no advisory committee member having such an interest or involvement may participate in any decision relating to such organization or enterprise.

(i) The books and records of the corporation relative to expenditures and investments of monies from the fund shall be subject to a biennial audit by the auditor of the commonwealth.

(j) Beginning with the fiscal year ending on June 30, 2004, on or by the 15th day of each quarter of each year, the board, in conjunction with the advisory committee, shall submit to the governor, the house and senate committees on ways and means, the house and senate committees on science and technology, the joint committee on commerce and labor and the joint committee on health care the following: (1) a list of recipients of grants or other monies from the fund, together with the associated amounts committed from the fund and the resultant amounts that will be leveraged from federal and private sources, a detailed statement of the specific costs and benefits of the award, and other material elements of the award, (2) a quarterly statement of cash inflows and outflows detailing the

sources and uses of funds, (3) a forecast of future payments based on current binding obligations, and (4) a detailed breakdown of the purposes and amounts of administrative costs charges to the fund.

## **Municipal Incentives for Smart Growth Zoning II**

SECTION 103. The General Laws are hereby amended by inserting after chapter 40Q the following chapter:-

### **CHAPTER 40R**

#### **SMART GROWTH ZONING AND HOUSING PRODUCTION.**

Section 1. It is the policy of this chapter to encourage smart growth and increased housing production in Massachusetts. Smart growth is a principle of land development that emphasizes mixing land uses, increases the availability of affordable housing by creating a range of housing opportunities in walkable neighborhoods, takes advantage of compact design, fosters distinctive and attractive communities, preserves open space, farmland, natural beauty and critical environmental areas, strengthens existing communities, provides a variety of transportation choices, makes development decisions predictable, fair and cost effective and encourages community and stakeholder collaboration in development decisions.

Section 2. As used in this chapter, the following words shall have the following meanings:

“10 year demand estimate,” the department’s annual estimates of potential housing demand in each of the state’s regional planning districts over the next 10 years. Where geographically and programmatically appropriate, the department shall also make such estimates for subdivisions of each district.

“Affordable housing,” housing for those individuals and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development. Affordability shall be assured for a period of no less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184.

“Approved smart growth zoning district,” a smart growth zoning district that has been adopted by a city or town and approved by the department in accordance with this chapter and the regulations of the department, so as to be eligible for the receipt of financial and other incentives. The department may revoke its approval if the obligations of the city or town are not met.

“Approving authority,” an authority designated by the city or town to review projects under section 12.

“Build-out analysis,” an estimate, prepared in accordance with the department’s regulations, of the maximum number of multi-family and single-family housing units that could be built as new construction in a smart growth zoning district under a proposed smart growth zoning district by-law.

“Community”, a city or town.

“Comprehensive housing plan,” a plan to be prepared by each city or town that provides an assessment of the housing needs within a city or town and describes specific strategies to address these needs, in accordance with regulations of the department.

“Density bonus payment,” an amount paid by the commonwealth to each city or town with an approved smart growth zoning district. The density bonus payment shall be \$2,000 for each multifamily unit of new construction allowed in the smart growth zoning district, and \$4,000 for each single family unit of new construction allowed in the smart growth zoning district.

“Department,” the department of housing and community development.

“Developable land area,” that area within an approved smart growth zoning district that can be feasibly developed into residential or mixed use development. Developable land area shall not include: (1) land area that is already substantially developed, including existing parks and open space within such substantially developed portion, (2) open space designated by the city or town as provided in section 6, or (3) land that is unsuitable for development because of unique topographic features or for environmental reasons, such as wetlands. It shall include the land area associated with underutilized commercial, industrial or institutional buildings or uses that have the potential to be recycled or converted into residential or mixed use developments as contemplated by this statute.

“Eligible locations,” (1) areas near transit stations, including rapid transit, commuter rail, and bus and ferry terminals; (2) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts; or (3) areas that by virtue of their infrastructure, transportation access, existing underutilized facilities, and/or location make highly suitable locations for residential or mixed use smart growth zoning districts.

“Historic district,” a district in a city or town characterized by the unique historic quality of the buildings within the district, and in which exterior changes to all buildings and the construction of new buildings are subject to special architectural and design guidelines as voted by the city or town pursuant to state law.

“Letter of eligibility,” a letter to a city or town to be issued by the department within 60 days of receiving a complete and approvable application from a city or town for approval of a smart growth zoning district.

“Mixed use development,” a development containing a mix of some or all of multifamily residential, single family residential, commercial, institutional, industrial, and other uses, all conceived, planned, and integrated to create vibrant, workable, livable and attractive neighborhoods.

“Multi-family housing,” apartment or condominium units in buildings that do or will contain more than 4 such units.

“New construction,” construction of new housing units, the substantial rehabilitation of existing buildings or the conversion to residential use of existing buildings to create additional housing units, to the extent those units could not have been constructed or converted without the smart growth zoning district.

“Open space,” shall include, but not be limited to, land to protect existing and future well fields, aquifers, and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes, and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

“Pre-existing district,” a zoning district or overlay zoning district that substantially meets the objectives and the minimum standards of this chapter as set forth in section 6.

“Project,” a proposed residential or mixed use development within a smart growth zoning district.

“Smart growth zoning district,” or “district,” a zoning district adopted by a city or town under this statute that is superimposed over 1 or more zoning districts in an eligible location, within which a developer may elect to either develop a project in accordance with the smart growth zoning district by-law, or develop a use in accordance with the underlying zoning district.

“Smart growth zoning district by-law,” a by-law or ordinance that amends the local zoning ordinance or by-law to provide for a smart growth zoning district in accordance with this chapter.

“Smart growth zoning district certificate of compliance,” a written certification by the department in accordance with section 7.

“Smart growth zoning district plan,” a plan prepared in accordance with the smart growth zoning district by-law that sets forth the information required by the city or town about a proposed project in a smart growth zoning district to be reviewed by the approving authority as provided in this chapter.

Section 3. A city or town may adopt a smart growth zoning district, which shall include appropriate areas that are served by any existing infrastructure and utilities and that have pedestrian access to schools, civic facilities, retail or employment centers, and other destinations. A smart growth zoning district by-law shall be passed by a two-thirds vote of the body authorized under section 6 of chapter 40A to amend the zoning ordinance or by-law.

In creating such a district, a city or town may include qualifying areas within development districts approved by the economic assistance coordinating council pursuant to chapter 40Q or any area approved by a city or town as an urban center housing tax-increment financing zone pursuant to section 60 of chapter 40. In smart growth zoning districts, a city or town shall allow primary residential use and may also allow business, commercial or other uses consistent with primary residential use.

Section 4. Upon application by a city or town, the department shall make a preliminary determination, before the city or town votes on a proposed smart growth zoning by-law, whether the district would be eligible for the financial incentives and the priorities for state expenditures set forth in section 10. The department’s determination shall be communicated to the city or town in a letter of eligibility. The department shall confirm such determination in writing after local adoption of the by-law. If the department fails to issue a preliminary determination within 60 days of a request for determination by a local city or town, the request shall be deemed to be approved. If the department cannot approve the application, the department shall inform that applicant of the deficiencies in its submission. The decision of the department shall be final. Nothing in this section shall preclude a city or town from re-applying for approval after addressing any deficiencies in a prior application.

Section 5. The executive officer of a city or town desiring to enact a smart growth zoning district by-law must submit appropriate materials to the department for a preliminary determination of eligibility for approval. The information in the application must:

- (a) identify and describe the boundaries of the proposed smart growth zoning district;
- (b) identify and describe the developable land area within the proposed smart growth zoning district;
- (c) identify and describe other residential development opportunities for infill and the re-use of existing buildings and under-utilized buildings within already developed areas;

- (d) include a build-out analysis, as set forth in section 8;
- (e) include a comprehensive housing plan, as set forth in section 9;
- (f) include a copy of the proposed smart growth district by-law;
- (g) by narrative and exhibits, address elements set forth in section 6.

Section 6. (a) A proposed smart growth zoning district must satisfy the following minimum requirements:

1. The proposed district shall be located in an eligible location.
  2. The proposed district shall provide for residential use which includes a mix of housing, such as rental and homeownership for families, individuals, persons with special needs, and the elderly.
  3. The proposed district shall provide for mixed use development.
  4. Housing density in the proposed district shall be at least 20 units per acre for multi-family housing for all developable land area; 8 units per acre for single-family homes for all developable land area; and 12 units per acre for 2, 3, and 4 family buildings for all developable land area.
  5. The zoning by-law for each proposed district shall provide that not less than 20 percent of the residential units constructed in projects of more than 12 units shall be affordable, as defined in section 2, and shall contain mechanisms to ensure that not less than 20 percent of the total residential units constructed in each district shall be affordable.
  6. A proposed district shall permit infill on existing lots and allow the provision of additional housing units in existing buildings, consistent with neighborhood building and use patterns and building codes.
  7. A proposed smart growth zoning district shall not limit the issuance of building permits for residential uses.
  8. A proposed district shall not impose restrictions on age or any other occupancy restrictions on the district as a whole. This provision does not preclude the development of specific projects that may be exclusively for the elderly, the disabled, or for assisted living. Not less than 25% of the housing units in such a project shall be affordable housing as defined in this chapter.
  9. A proposed district must comply with federal, state and local fair housing laws.
  10. A proposed district may not exceed 15 percent of the total land area in the city or town. Upon request, the department may approve exceptions to this rule if such an approval furthers the goals and objectives of the chapter.
  11. The aggregate land area of all approved smart growth zoning districts in the city or town may not exceed 25% of the total land area in the city or town.
  12. Housing density in a proposed district shall not over burden infrastructure as it exists or may be practicably upgraded in light of anticipated density and other uses to be retained in the district.
  13. A proposed smart growth zoning district by-law shall define those categories of projects that shall require review by the approving authority in accordance with section 12.
- (b) A city or town may modify or waive dimensional standards from underlying zoning in the smart growth zoning district by-law to support desired densities, mix of uses, and physical character of the smart growth zoning district. Dimensional standards subject to modification or waiver may include, but are not limited to, height, setbacks, lot coverage, parking ratios and locations, and roadway design standards. Such dimensional modifications or waivers may be applied as-of-right or through the smart growth zoning district plan review process. A city or town may designate certain areas of a smart growth zoning district for specific types of residential or mixed use development. These may include, but are not limited to: single family, multifamily, mixed use, retail, commercial, office and industrial. A city or town or town may limit the amount of an approved type of development allowed in a particular location to a certain percentage of the total development in that location. A city or town may designate certain areas within a smart growth zoning district as perpetual open space through the use of a conservation restriction as defined in section 31 of chapter 184. The amount of such open space shall not be computed in determining the density levels for the developable land area within the smart growth zoning district. Open space may include an amount of land equal to up to 10 percent of the developable land area if the developable land area is less than 50 acres, and 20 percent of the developable land area if the developable land area exceeds 50 acres.
- (c) Projects that do not require smart growth zoning district plan review, as provided in section 12, shall be allowed without further zoning review or approval.
- (d) A smart growth zoning district may encompass an existing historic district or districts. Nothing in this chapter shall prevent a city or town from establishing a historic district in an approved smart growth zoning district, so long as the establishment of the historic district does not render the city or town non-compliant with this chapter, as determined by the department. The historic districts may be coterminous or non-coterminous with the smart growth zoning district. Within any such historic district, the provisions and requirements of the historic district will



apply to existing and proposed buildings. The department shall prescribe by regulations the circumstances governing approval of historic districts within a smart growth zoning district.

(e) A city or town may require more affordability than required by this chapter, both in the percentage of units that must be affordable, and in the levels of income for which the affordable units must be accessible.

(f) In any city or town with a population of fewer than 10,000 persons, as determined by the most recent federal decennial census, the department may, pursuant to regulations adopted under this chapter, approve a smart growth zoning district at lower densities than provided in this chapter, if the city or town satisfies the other requirements set forth in this section.

(g) A city or town may amend or repeal an approved smart growth zoning district by-law upon written approval by the department. Each amendment or repeal must be submitted to the department with an evaluation of the effect on the city or town's build-out analysis described in section 8. If the department does not respond to a complete request for approval of an amendment or repeal within 60 days of receipt, the request shall be deemed approved.

(h) Nothing in this chapter shall affect a city or town's authority to change its zoning ordinance under chapter 40A, so long as the changes do not affect the smart growth zoning district.

Section 7. (a) On or before October 1 of each year after the year of approval of a district by the department, the department shall send a smart growth zoning district certificate of compliance to each city or town with an approved district. The certificate shall verify:

1. that the city or town has adopted a smart growth zoning district;
2. that the certification has not been revoked by the department by a written revocation so recorded;
3. that the district is being developed in a manner that reasonably complies with the minimum requirements set forth in section 6 for housing density and affordability;
4. that development in the district is proceeding in approximately the manner anticipated in the build-out analysis and the comprehensive housing plan; and
5. that the city or town has not denied plans for projects, or has only denied plans for projects in a manner consistent with its smart growth zoning district by-law, the city or town's comprehensive housing plan and this chapter.

(b) The certificate shall be recorded with the registry of deeds or land court registry district for the county or district within which the city or town is located, indexed in the grantor index under the name of the city or town.

(c) If the department is unable to certify compliance, the department shall hold a public hearing subject to chapter 30A. If the department concludes that the city or town is in material non-compliance with the requirements set forth in this section, the department may sanction the city or town. Such sanctions may include, but shall not be limited to, repayment of all or a portion of the amount of the density bonus payment, plus interest at the rate specified in section 3 of chapter 107, that had been received by the city or town, repayment of any other funds received as a result of subsections (b) and (c) of section 10, and revocation of certification. All sums repaid by the city or town under this section shall be deposited into the Smart Growth Housing Trust Fund established by section 35BB of chapter 10. Such sanctions shall also apply if a city or town passes a historic district within an approved smart growth zoning district without prior approval from the department. A revocation of certification shall be recorded with the registry of deeds or land court registry district for the county or district within which the city or town is located, indexed in the grantor index under the name of the city or town.

(d) The department shall promulgate regulations to set forth the circumstances under which sanctions would be imposed on a city or town under this section for non-compliance, to describe the procedures for the city or town to cure non-compliance, and to describe the sanctions that will be imposed for specific instances of non-compliance.

(e) Nothing in this chapter shall prohibit a city or town from requesting approval for, and the department from granting approval to, an otherwise eligible smart growth zoning district that will cause the total number of eligible smart growth zoning district residential units within the district to exceed the 10 year demand estimate. If approved, the density bonus payments shall not be made on behalf of such excess units until such time as justified by updated and increased 10 year demand estimates.

Section 8. (a) A build-out analysis shall be prepared in accordance with regulations to be promulgated by the department, and shall be approved for form, content, and methodology by the department before the adoption of the smart growth zoning by-law. For purposes of the build-out analysis, no land or existing properties shall be assumed to be available for development, such that potential housing units would be used for computing the density bonus payments, if the ownership of the property is such that it is unreasonable to assume that at some time during the next 10 years the owners might undertake residential development as contemplated by the smart growth zoning district, or offer the property for sale for such development.

(b) A build-out analysis shall contain the following components:

1. an analysis of the proposed developable land area, to assess the economic feasibility and practicality of potential development within the developable land area;
2. an analysis of potential residential development in already developed areas within the smart growth zoning district on infill lots or by adding new housing units to existing buildings;
3. an evaluation of underutilized industrial, commercial, and institutional buildings to determine the economic feasibility and practicality of conversion into housing units;
4. a compilation of the maximum number of housing units of new construction and their type that are allowed by the proposed smart growth zoning district. This figure is to be provided as a basis for making the density bonus payments, and therefore should include all relevant considerations.

(c) The calculations of and the amount of the density bonus payments shall be included in the build-out analysis for the proposed smart growth zoning district. The department shall not issue a smart growth zoning district eligibility letter until it has reviewed and approved the calculations and the amounts of the density bonus payments contained in the build-out analysis. If a proposed smart growth zoning district by-law is amended or modified during the approval process, the department shall appropriately amend and approve the build-out analysis before the issuance of the smart growth zoning district certificate of compliance.

Section 9. A city or town shall prepare a comprehensive housing plan to be submitted for review and approval to the department before or concurrently with the city or town's application. If a city or town has already completed a comprehensive housing plan, the city or town shall submit with its application to the department a description of how the proposed smart growth zoning district relates to and will further the goals of its comprehensive housing plan.

Section 10. Each city or town with an approved smart growth zoning district shall be entitled to payments as described below.

(a) The commonwealth shall pay from the Smart Growth Housing Trust Fund established by section 35BB of chapter 10 a density bonus payment to each city or town with an approved smart growth zoning district. This payment will be made based on the number of housing units of new construction that are allowed in the smart growth zoning district. One-third of the amount of the total density bonus payment shall be paid to the city or town within 30 days after the department's confirmation following the city or town's adoption of its smart growth zoning district by-law. The balance of the amount due shall be paid pro-rata on a unit-by-unit basis, on November 15 of the fiscal year following the fiscal year in which a building permit is issued for a particular housing unit or units within the district.

Density bonus payments shall not be made on housing units allowed in approved smart growth zoning districts to the extent that the number of units, when aggregated with all allowed but unbuilt housing units in approved smart growth zoning districts within the regional planning district or sub-district, exceeds the 10 year demand estimate for the district or sub-district as determined by the department.

(b) The executive office of environmental affairs, the executive office of transportation, the department of housing and community development and the secretary of administration and finance shall, when awarding discretionary funds, give priority to cities or towns with approved smart growth zoning districts.

(c) The commonwealth shall hold cities and towns harmless from any actual additional net public school costs to which cities and towns become subject as a result of adopting the smart growth zoning districts described in this chapter, using money from the Smart Growth Housing Trust Fund established by section 35BB of chapter 10, inserted by section 24. The department shall calculate those costs annually using a formula it has developed in consultation with the department of education and the division of local services in the department of revenue and that has been approved by law. Any payments to cities and towns under this section shall be made on November 15 of each year.

Section 11. A city or town may include within its smart growth by-law design standards applicable to projects undergoing review by the approving authority, to ensure that the physical character of development within the smart growth zoning district is complementary to adjacent buildings and structures and any applicable master plan or plans for the city or town. Such standards may address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the location of building and garage entrances and off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties, and shall provide for high-density quality development consistent with the character of building types, streetscapes and other city or town features traditionally found in densely settled areas of the city or town or in the region of the city or town.

A design standard shall not be adopted or applied if it will add significant costs to residential or mixed-use developments such that the economic feasibility of proposed projects will be substantially compromised. The

department shall take this requirement into consideration in its approval of requests for the determination of eligibility for a smart growth zoning district.

Section 12. (a) The development of certain categories of projects in an approved smart growth zoning district shall be authorized by the city or town after review and approval of a plan for the project. Unless otherwise set forth in this section, the procedures set forth in the twelfth, thirteenth and fourteenth paragraphs of section 9 and sections 11, 15, 16 and 17 of chapter 40A shall apply to review by the approving authority of plans for projects under this chapter.

(b) Communities may incorporate provisions within the smart growth district zoning by-law that set forth required contents of an application for approval of a project, including design standards. Communities may require the applicant to pay for reasonable consulting fees to provide peer review of the applications.

(c) An application for approval under this section shall be governed by the applicable provisions of the zoning ordinance or by-law in effect at the time of the submission, while the plan is being processed under the smart growth zoning by-law, during the pendency of an appeal from the site plan decisions, after approval of the site for so long as the site plan approval is valid. If an application is denied, the zoning provisions in effect at the time of the application shall continue in effect with respect to any further application filed within 2 years after the date of the denial.

(d) The project shall be approved subject only to those conditions that are necessary (1) to ensure substantial compliance of the proposed project with the requirements of the smart growth zoning district by-law, or (2) to mitigate any extraordinary impacts of the project on nearby properties. An application may be denied only on the grounds that (i) the plan does not meet the conditions and requirements set forth in the smart growth zoning district by-law, (ii) the applicant failed to submit information and fees required by the by-law and necessary for an adequate and timely review of the potential project impacts, or (iii) it is not possible to adequately mitigate significant project impacts on nearby properties with conditions that are acceptable to the project applicant.

(e) In any appeal to a court authorized to hear appeals under section 17 of chapter 40A of a decision by a city or town, the hearing shall be based on the record before the approving authority.

(f) A plaintiff seeking to reverse a project approval under this section shall identify in its complaint the specific reasons why the project fails to satisfy requirements of this chapter or applicable local law. The city or town's decision in such a case shall be affirmed unless the court concludes the approving authority abused its discretion in approving the project.

(g) A plaintiff challenging the approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated cost of (1) interest at the statutory rate on the current value of the property, computed on the basis of the zoning being approved, plus (2) an amount sufficient to cover the defendants' attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction, which bond shall be forfeited to the property owner in an amount sufficient to cover the property owner's carrying costs and legal fees less any net income received by the plaintiff from the property during the time of the appeal in the event that the plaintiff does not substantially prevail on its appeal.

(h) An applicant under this section seeking to reverse a project denial or conditional approval under this section shall identify in its complaint the specific reasons why the city or town's decision fails to satisfy requirements of this chapter or applicable local law. The city or town's decision in such a case shall be affirmed if there is substantial evidence in the record supporting the decision.

(i) The court exercising jurisdiction over an appeal shall give priority to appeals under this section.

(j) The first paragraph of section 16 of chapter 40A shall not apply to application for projects within a smart growth zoning district.

Section 13. The department shall be responsible for the administration, review, and reporting on the smart growth zoning district program set forth in this chapter. The department shall undertake or cause to be undertaken an annual review and the preparation of a report on the program set forth in this chapter. The report shall be made available to the general public, shall be submitted to the general court annually no later than November 15 of each year, and shall cover the status of the program through the end of the prior fiscal year. The report shall identify and describe the status of communities that are actively seeking to enact smart growth zoning. It shall identify and describe the status of all approved smart growth zoning districts and the amounts and anticipated timing of density bonus payments during the prior and current fiscal year. It shall summarize the amount of land areas zoned for particular types of projects in both proposed and approved districts, the number of projects being reviewed by communities under section 12, including the number and type of proposed residential units, the number of building permits issued, the number of completed housing units and their type, the number of public school children residing in new construction in approved districts, and it shall provide an accounting of the density bonus payments made to

each city or town. For the then current and the immediately succeeding fiscal years it shall (i) make estimates for the number and size of proposed new districts, (ii) the potential number of residential units to be allowed in proposed new districts, and (iii) make estimates for anticipated construction activity and increases in public school children living in new housing units constructed in approved districts.

Section 14. A city or town with a pre-existing district may apply to the department for approval of that district as a smart growth zoning district. In no event shall the department approve such an application if the affordability requirements and the density requirements of that district are less than those set forth in section 6. If the department grants approval, the city or town shall be eligible for priority for capital investments by the commonwealth as set forth in section 10. Within 30 days after its approval, the department shall pay the city or town a density bonus payment equal to one-third of the amount that would be due the city or town under this chapter according to the build-out analysis submitted by the city or town. The city or town with the pre-existing district shall be entitled to no further density bonus payment.

### **Quinn Bill Education Standards Reform**

SECTION 104. Section 108L of chapter 41 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following 10 paragraphs:—

Only graduates of: (1) criminal justice or law enforcement programs that meet or exceed the guidelines for criminal justice and law enforcement programs, as set forth by the board of higher education and implemented on January 1, 2004; or (2) law schools that are New England Association of School and Colleges accredited or board approved and who have passed the Massachusetts bar examination, shall be eligible for the police career incentive pay program.

The president of a New England Association of Schools and Colleges accredited institution or board of higher education approved institution shall submit a letter of intent to seek approval of its criminal justice degree program to the chancellor of the board of higher education by May 1 of the year in which the institution intends to submit an application. The letter of intent shall include a statement of commitment to implement Standard D, Admission and Articulation, for all students enrolling in a criminal justice or law enforcement program after May 1 of the calendar year in which the letter is submitted. All programs shall meet the guidelines for criminal justice and law enforcement program as approved by the board of higher education.

Applications for approval as a police career incentive pay program participating institution shall be developed by the board of higher education and shall include the following: (1) a profile of the program; (2) demonstration of the program's fulfillment of the standards as stated in the guidelines; and (3) an application fee to cover the evaluation costs of the review process. Applications are to be submitted according to the timetable established by the board of higher education.

Each institution shall pay an evaluation fee to the board of higher education's police career incentive pay program quality assurance trust fund to cover the costs of review of its program. In addition to the fee, the institution shall pay for travel, room, board and other normal expenses of the external evaluation committee. If the committee requires subsequent visits, the board of higher education shall charge for further expenses at its discretion. Evaluation fees will be determined by the total number of degrees awarded to all students enrolled in the criminal justice and law enforcement program being reviewed based on an average of the 3 years immediately prior to the submission of the application.

Fees shall be determined by the total number of degrees awarded to all students in the criminal justice and law enforcement program being reviewed in the following manner: \$1,000 for institutions awarding fewer than 20 criminal justice or law enforcement degrees per year, \$1,500 for institutions awarding between 20 and 50 criminal justice or law enforcement degrees per year, \$2,000 for institutions awarding between 51 and 100 criminal justice or law enforcement degrees per year, \$2,500 for institutions awarding between 101 and 151 criminal justice or law enforcement degrees per year, \$3,000 for institutions awarding between 151 and 200 criminal justice or law enforcement degrees per year and \$3,500 for institutions awarding over 200 criminal justice or law enforcement degrees per year.

Once an application is submitted, the following timetable shall apply: (1) within 30 business days, board staff shall determine whether or not the application is complete and notify the institution; (2) within 30 business days of notification to the institution that the application is complete, an external evaluation committee will be appointed in accordance with the guidelines; (3) within 30 business days of completing the evaluation of a program's application, the external evaluation committee shall submit a report to board staff; (4) within 30 business days of receipt of the report, board staff shall send the committee's report to the institution with a response required; (5) the institution may request an extension, if needed, to respond adequately to the Committee's report; (6) within

30 business days of receiving the institution's response, the staff of the board will evaluate materials submitted by the institution, the committee's written report, the written response from the institution, and any additional information submitted by the institution, including a request for a delay; (7) based on its review, board staff shall make a recommendation to the board for deferral, approval, or disapproval, and the board shall take action by formal vote; and (8) if the board's determination is to disapprove the institution's request, the board shall provide a statement of reasons for the decision.

Programs approved by the board of higher education shall be included on an approved program list for 5 years. The institutions shall annually submit a status report on its approved programs to the board. Programs receiving deferrals from the board shall receive specific conditions that must be met and a timetable for coming into compliance. Programs not approved by the board may not re-apply for at least 1 calendar year following the board's determination.

When, in the judgment of the board staff, a review or inspection of a degree program is necessary, the board, in consultation with the applicant institution, shall select and appoint an external evaluation committee to serve in the following manner: (1) the committee shall review the materials submitted by the program, visit the institution, and submit a report to the board containing recommendations regarding the programs request for approval; (2) the number of reviewers on the committee shall be determined by size, number and level of the program being reviewed and shall under no instance have fewer than 2 academicians; (3) to be eligible to serve as an evaluator, individuals shall have earned at least a master's degree in criminal justice or a closely related discipline and academic team members shall have professional experience in college-level teaching, research, administration or other relevant activities with institutions of higher education, and practitioners shall have at least 5 years of full-time supervisory or administrative experience as a criminal justice practitioner, as well as specific knowledge of or experience in criminal justice education; (4) no person shall serve as an evaluator who is employed by an institution considered by the board to be in direct competition with the institution under review; (5) no person shall serve as an evaluator who has a present or recent official or unofficial connection with the institution under review, or who the board has reason to believe has independent or pecuniary interest in the outcome of the board's final action; provided, however, that external evaluators shall have a disinterested professional commitment to the task of rendering objective finding and recommendations based upon empirical evidence and informed judgments; (6) each committee shall have a chairperson who shall be responsible for providing leadership to the committee, for being the committee's liaison with the institution and for preparing with other committee members, the committee's report; (7) the committee shall submit a written report, including recommendations to the board, and board staff shall forward a copy of the report to the institution to correct factual errors and respond to the content and recommendations within the report; (8) evaluators shall be given an honorarium by the board of higher education and all expenses shall be paid by the institution under review; and (9) evaluators shall be provided an orientation before conducting reviews.

Annually, each approved institution shall submit 2 copies of a report to the board reviewing the status of the institution's criminal justice and law enforcement program. This report shall certify that the criminal justice program is being maintained and operated within the provisions and guidelines set forth by the board of higher education guidelines for criminal justice and law enforcement programs. If at any time, in the judgment of the board staff, there is a reasonable probability of non-compliance with the board's guidelines by a particular institution, the board may review the institution to determine if continued approval of the institution is proper.

An institution that is in objection of an adverse decision may appeal the board's determination. The appeal shall be heard by a review panel appointed by the board of higher education and the findings and recommendations of the panel shall be received by the board whose decision shall be final.

### **Expedited Permitting**

SECTION 105. The General Laws are hereby amended by inserting after chapter 43C the following chapter:-

#### **CHAPTER 43D.**

##### **Expedited Permitting.**

Section 1. (a) This chapter shall apply in a city or town upon its acceptance under section 4 of chapter 4. Sections 2 to 5, inclusive, shall be adopted together, but collectively may be adopted without section 6. If section 6 is adopted, then sections 2 to 5, inclusive, shall also be adopted. The adoption of any portion of this chapter shall be considered to be an amendment to any contrary laws, local charters or laws having the force of charters. (b) Subject to appropriation and upon certification of the commissioner of revenue, the state treasurer shall annually distribute to cities and towns that adopt this chapter a total amount not to exceed 3 per cent of the sum of funds

distributed pursuant to section 25A of chapter 58 to all cities and towns that have adopted this chapter. The allocation of funds to each city or town shall be by a formula to be developed by the division of local services of the department of revenue. The commissioner of revenue shall report to the secretary of administration and finance and the house and senate committees on ways and means by November 1, 2004 on the formula it proposes to adopt, and any related recommendations for legislation.

Section 1A. The secretary of administration and finance shall collaborate with the commissioner of the department of revenue and the state treasurer to develop incentives that expedite local permitting and zoning consistent with the provisions set forth herein. Said incentives may include, but shall not be limited to, use of payments pursuant to section 25A of chapter 58 to cities and towns, or other forms of fiscal incentives. Said secretary shall report to the house and senate committees on ways and means not later than November 1, 2004, on any such recommendations necessary to implement the incentives proposed to effectuate such expedited permitting, including any related legislation.

Section 2. The following words shall have the following meanings unless the context clearly requires otherwise:

"Issuing authority", a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development.

"Municipality", the locality acting through the relevant issuing authority as it pertains to actions required or allowed by this chapter.

"Office", the municipal office of permit coordination provided for in subsection (b) of section 3.

"Permit", a permit formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use or development of land or structures required by any issuing authority including but not limited to those under statutory authorities contained in chapter 40A, sections 81A to 81J, inclusive and sections 81X to 81GG inclusive, of chapter 41, sections 40 and 40A of chapter 131, sections 26 to 32, inclusive of chapter 111, chapter 40C, sections 13 and 14 of chapter 148, chapter 772 of the acts of 1975, or otherwise under state law or local by-law or ordinance adopted under home rule authority, and all associated regulations, bylaws and rules, but not including building permits or approvals pursuant to sections 81O to 81W, inclusive, of chapter 41. "Permit" shall not include the licensing of an individual to engage in a profession or the decision of an agency to dispose of property under its management or control. "Permit" shall also not include predevelopment reviews conducted by the municipal office of permit coordination or a technical review team. Permits and approvals shall not include permits and approvals granted by the Massachusetts water resources authority under its authority or under authority delegated from an agency otherwise covered by this chapter. Permits and approval actions taken pursuant to a federal delegation shall be excepted only to the extent that the terms of such delegation are inconsistent with this chapter.

"Technical review team", an informal working group consisting of representatives of the various issuing authorities designated by the head of their issuing authority, to review requests submitted under the procedures established pursuant to sections 3 to 6, inclusive. The technical review team shall not include members of the zoning board of appeals.

Section 3. (a) The municipality shall, within 180 days of acceptance of any of the provisions of sections 2 to 6, inclusive, amend where necessary, rules and regulations on permit issuance to conform with those sections and may adopt guidelines consistent with this chapter. The municipality shall collect and ensure the availability of, and the issuing authorities shall memorialize and ensure the availability of, all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit. The municipality is encouraged to compile a comprehensive permitting process guidebook and to provide other informational assistance relative to permitting through a single point of contact established pursuant to subsection (b).

(b) A city or town shall establish, or designate an existing office or staff member to serve as, a single point of contact for the purposes of coordinating and facilitating the land use permitting process. The office or staff member so designated shall be the municipal office of permit coordination, hereinafter referred to as the office. In fulfilling the functions established in this chapter, the office shall consult with the authorities having substantive jurisdiction over the issuance of permits. To the greatest extent possible, the office shall fulfill the procedural responsibilities of the municipality.

(c) The municipality, to the greatest extent possible, shall establish a procedure for coordinated and concurrent review of all permit reviews required for a single project and, where feasible, shall coordinate municipal review with state review. Nothing in sections 2 to 6, inclusive, shall be construed to alter the substantive jurisdictional authority of issuing authorities.

(d) The municipality, through the office, shall establish a procedure whereby the municipality shall identify, based upon submission by the applicant of a form provided by the municipality all permits, reviews and

predevelopment reviews required for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities. The municipality shall notify the applicant of such requirements in writing within 20 business days from receipt of the completed form. The municipality may provide for pre-application conferences to facilitate this process.

The office and the applicant may publish an early notice in a local paper, and a statewide paper or the Environmental Monitor, with a description of the project and scope of review preliminarily suggested by the office. The early notice shall be in addition to any required notice for required public hearings and may, at the municipality's option, direct inquiries to either the office or the applicant.

The failure of a municipality to notify an applicant of a requirement of a public hearing or comment period shall not waive the legal requirement for any such requirement. If, at any time, an issuing authority determines that a permit or other predevelopment review is required which it did not previously identify, it shall immediately notify the applicant by certified mail and shall, where public notice and comment or hearing are not required, complete action on the application filed for the previously unidentified permit within 35 days of receipt of the completed application or not later than the latest required decision date for a pending permit, whichever is later. Where public notice and comment or hearing are required for the previously unidentified permit, the required action date shall be not later than 35 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows.

(e) The municipality shall establish a procedure, following the notification of the required submissions for review as set forth in subsection (d), for determining the completeness of the submission by the applicant of all materials required for the review of the project, which shall be not later than 10 business days after receipt of the application materials. If the municipality fails to send notification that an application is not complete within that time period, the application shall be considered complete. If the municipality determines the application is not complete, the written notice shall include a concise statement regarding the reasons why the application is incomplete. The resubmission of the application or the submission of such additional information required by the municipality shall commence a new period for review of the additional information for purposes of determining completeness. A finding that the application is complete shall not prevent the municipality from requesting additional information during the course of project review.

(f) The municipality shall, within 180 days after acceptance of any provision of sections 2 to 6, inclusive, establish time periods within which all permit reviews shall be conducted and completed. The timelines shall begin to run upon issuance of the notice that the application materials are complete pursuant to subsection (e). The timeline shall not exceed 90 days for reviews which do not require public hearings and 120 days for reviews which require a public hearing. The procedure shall provide for the consolidation of public hearings and public notices. Public notices shall appear in a local newspaper and the Environmental Monitor at least twice before the hearing date. At the written request of 10 citizens, an additional public hearing shall be held, if the 120-day time period for review, established under this section, has not been exceeded. Where appropriate, the municipality may establish general permits and permits by rule which shall consist of standards of performance specified by the issuing authority and shall be authorized after a written filing by the applicant.

(g)(1) If the issuing authority fails to act within the time period established by the municipality pursuant to subsection (f), the relief requested shall be considered granted by operation of law. In that event, within 14 days from the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to the automatic approval and stating that notice of the automatic grant has been mailed, by certified mail, to all parties to the proceedings and all person entitled to such notice of hearing in connection with the application. Appeals from the automatic grant, if any, shall be filed by an aggrieved person within 20 days after the date the city or town clerk received the affidavit in accordance with section 17 of chapter 40A. A plaintiff shall provide written notice of the action with a copy of the complaint to all parties on the administrative record within 10 business days after filing the complaint and an affidavit of the notice shall be filed with the court. If the affidavit is not filed within that time, the complaint shall be dismissed. The court shall advance any action so that it may be heard and determined as soon as possible. The court shall hear all evidence and determine the facts, and upon the facts determined, shall issue a decree as justice and equity may require.

(2) An automatic grant of approval shall not occur where: (i) the city or town has made a timely determination that the application is not complete in accordance with its regulations; (ii) the final application contained false or misleading information; or (iii) substantial changes to the project which affect the information required to process the permit application have occurred since the filing of the application.

(3) A time period specified in this section may be waived or extended for good cause by written request of the applicant with the consent of the municipality or by the written request of the head of the issuing authority with the consent of the applicant. A time period specified by this section shall be extended when the issuing authority determines in writing either: (i) that action by another federal, state or municipal government agency is required before the issuing authority may act; (ii) that judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or (iii) that enforcement proceedings which could result in revocation of an existing permit for that facility or activity and denial of the application have been commenced. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, and shall complete its decision within the time periods specified in this section, beginning the day after the notice is issued. Any time period specified in this section may be extended by the head of the issuing authority where significant public comment has been received which would, on its face, appear to constitute grounds for the issuing authority to deny the permit or significantly modify the permit. An extension of a time period shall be filed by the issuing authority with the city or town clerk before the end of the otherwise applicable time period.

(4) An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application in accordance with sections 2 to 5, inclusive and section 6, where applicable. (h) The municipality shall establish an informal procedure to allow permit applicants to obtain advisory review by a technical review team of any issue of law, policy, procedure, or classification that the applicant claims is in dispute between the applicant and the issuing authority which has affected or will affect the ability of the applicant to obtain timely review of the permit application. Procedures shall provide for filing by the applicant of a request for review, representation by the permit issuing authority on the technical review team, and a period not to exceed 30 days for issuance of a decision. Invocation of this procedure shall toll the review time periods. An advisory determination or ruling made pursuant to a procedure established in this section shall not constitute a decision or final action and shall not be subject to any right of administrative or judicial review.

In addition to any fees that may be assessed by an issuing authority pursuant to sections 53 and 53G of said chapter 44, the office may establish an additional and separate fee for the carrying out of its duties under any provision of sections 2 to 7, inclusive, and may deposit the fees in a special account. The account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the office or another office designated to serve as that office, without further appropriation; provided, however, that the funds shall be expended by it only in connection with carrying out its responsibilities under any provision of sections 2 to 7, inclusive. At the sole discretion of the office, an annual surplus in fees may be used for the development of the regional plans, subject to matching funds by the municipal legislative body.

Section 4. An administrative appeal from a permitting decision shall be filed within 21 days after the issuing authority renders a decision. Nothing in this subsection shall be construed to create rights of appeal where a statutory form of administrative review or appeal is not otherwise provided.

Section 5. (a) Permits shall transfer automatically to successors in title, except for permits where financial ability to meet permit requirements, posting of a bond or the qualifications of an applicant are a condition or requirement for obtaining the permit, and the permit expressly requires approval of the issuing authority before transfer. Within 180 days of the acceptance of sections 2 to 6, inclusive, the municipality shall publish in a local newspaper and in a statewide newspaper or the Environmental Monitor a list of all permits which require the approval of the authority before transfer.

(b) Issuing authorities having substantive jurisdiction over permit issuance, in consultation with the office, may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the same procedures and timelines as specified in sections 2 to 5, inclusive, and section 6, where applicable.

(c) Permit modification requests shall be reviewed by an issuing authority within time frames set forth in this paragraph. An issuing authority shall inform an applicant within 15 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or additional information is required by the issuing authority in order to issue a decision. If additional information is required, the issuing authority shall inform an applicant within 15 business days after receipt of the required additional information whether the modification is approved or denied or that additional information is still required by the issuing authority in order to render a decision. In cases in which the issuing authority determines that a requested modification is substantial, the original time frames for permit categories as set forth in subsection (f) of section 3 shall apply.

(d) Permits issued pursuant to sections 2 to 5, inclusive, shall expire 2 years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement



and continuation of construction of 1 building shall preserve the permit validity. Nothing in this section shall limit the effectiveness of section 6 of chapter 40A.

Section 6. (a) A municipality which also accepts this section shall adopt procedures in this section for the designation and development of priority development sites.

(b) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Priority development site", a privately or publicly owned, municipally designated property which, at the request of the owner, is entitled to proceed with state and local permitting processes based upon a master plan of building sizes, categories of use and other relevant land use issues, including brownfields. There may be several different parcels or projects within a single priority development site.

"Priority master plan", a master plan for a priority development site which contains all information necessary to conduct a review of a priority development site for the purposes of state and municipal land use permits and reviews.

"Priority proposal", a document containing all information related to an actual proposed development project within a priority development site.

(c) To be eligible for designation as a priority development site, the property shall (1) be commercially or industrially zoned; and (2) be eligible under applicable zoning provisions, including special permits or other discretionary permits, for the construction of a building of 90,000 square feet of gross floor area or more. Municipalities, with advice and consent of the Massachusetts office of business development, may designate a property which does not meet these criteria if they determine that a proposed property presents an important opportunity for a commercial or industrial use.

(d) To have a property designated as a priority development site, the owner of the property shall file a request with the office. The request shall include a description of the property and buildings and evidence of compliance with the eligibility criteria in this section. The municipality shall issue a decision within 20 days. Each municipality shall establish a procedure for reviewing requests and making designations and shall weight favorably plans which are consistent with existing or proposed area growth management and planning documents.

(e) If designated, the owner shall consult with the Massachusetts office of business development and the executive office of environmental affairs, which shall designate a high-level representative to coordinate this process, to develop the scope of information required for a priority profile.

(f) Any required reviews established under sections 61 to 62H, inclusive, of chapter 30 or sections 26 to 27C, inclusive, of chapter 9 shall be conducted concurrently and shall conclude within 120 days of a state determination of completeness of required review materials, as shall be established by the executive office of environmental affairs. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with this subsection. In the event an applicant fails to comply with all relevant timeframes, the time shall be tolled until the applicant files the required documents.

(g) Notwithstanding any law to the contrary, a public notice or hearing necessitated by a proposed project on a priority development site shall be consolidated into a single hearing by the office and the commonwealth.

(h) A developer of a project within a priority development site shall file a priority proposal.

(i) The municipality and the executive office of environmental affairs shall prepare a form for priority proposals for priority development sites and shall designate one representative to review priority proposals. Municipal and state agencies shall render permit decisions within 60 days of issuance of receipt of a completed priority proposal which falls within the priority profile or which falls within 10 per cent differential of the priority profile, and within 90 days for all other priority proposals.

(j) Permits and approvals issued relative to a priority development site shall expire 5 years from the date of issuance unless exercised sooner. A project or parcel for which a priority proposal has been filed within the 5-year period shall be eligible for this process. Changes in the law subsequent to the issuance of permits based upon the priority proposal shall not invalidate the permits or review certificates.

(k) A priority development Site shall also be eligible for the following benefits:

(1) priority consideration for Community Development Action Grants and Public Works Economic Development Grants;

(2) accelerated consideration for other state resources such as quasi-public financing and training programs;

(3) brownfields remediation assistance; and

(4) enhanced marketing of the site by the Massachusetts office of business development.

(l) This section shall not apply where the municipality and commonwealth determine that the priority master plan or any required submissions have omitted requested or relevant information or contained false or misleading information.

Section 7. If any part of sections 1 to 6, inclusive, shall be found by a court of law to be unconstitutional, invalid or in conflict with federal or state requirements which are a condition precedent to the allocation of federal or state funds to a municipality or with the delegation of a federal or state permitting program, the remainder of these sections shall not be affected thereby.

#### **Municipal Finance Oversight Board I**

SECTION 106. Section 1 of chapter 44 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting, after the definition of “Majority vote”, the following definition:-

“Municipal finance oversight board”, a board composed of the attorney general, the state treasurer, the state auditor, and the director of accounts in the department of revenue, or their designees.

#### **Municipal Finance Oversight Board II**

SECTION 107. Clause (8) of section 8 of said chapter 44, as so appearing, is hereby amended by striking out the words “a board composed of the attorney general, the state treasurer, the state auditors, and the director of accounts, or their designees”, inserted by section 25 of chapter 46 of the acts of 2003, and inserting in place thereof the following words:- the municipal finance oversight board

#### **Municipal Finance Oversight Board III**

SECTION 108. Clause (8A) of said section 8 of said chapter 44, as so appearing, is hereby amended by striking out the words “a board composed of the attorney general, the state treasurer, the state auditor, and the director of accounts, or their designees”, inserted by section 26 of said chapter 46, and inserting in place thereof the following words:- the municipal finance oversight board

#### **Municipal Finance Oversight Board IV**

SECTION 109. Said section 8 of said chapter 44 of the General Laws, as so appearing, is hereby further amended by striking out clause (15), inserted by section 27 of said chapter 46, and inserting in place thereof the following clause:-

(15) For the construction of sewers, sewerage systems and sewage treatment and disposal facilities, or for the lump sum payment of the cost of tie-in to such services in a contiguous city or town, for a period not exceeding 30 years; provided, however, that either (i) the city or town has an enterprise or special revenue fund for sewer services and that the accountant or auditor or other officer having similar duties in the city or town shall have certified to the treasurer that rates and charges have been set at a sufficient level to cover the estimated operating expenses and debt service related to the fund, or (ii) the issuance of the debt is approved by a majority of the members of the municipal finance oversight board.

#### **Municipal Finance Oversight Board V**

SECTION 110. The first paragraph of section 10 of said chapter 44, as amended by section 32 of said chapter 46, is hereby amended by striking out the words “a board comprised of the attorney general, the state treasurer, the state auditor, and the director of accounts, or their designees” inserting in place thereof the following words:- the municipal finance oversight board

#### **Municipal Finance Oversight Board VI**

SECTION 111. Section 1 of chapter 44A of the General Laws, as amended by section 37 of said chapter 46 of the acts of 2003, is hereby further amended by striking out the definition of “Board.”

#### **Municipal Finance Oversight Board VII**

SECTION 112. Said section 1 of said chapter 44A is hereby amended by inserting, after the definition of “Distributable aid”, as appearing in the 2002 Official Edition, the following definition:-

“Municipal finance oversight board” or “Board” shall mean a board composed of the attorney general, the state treasurer, the state auditor, and the director of accounts in the department of revenue, or their designees.

### **Department of Public Safety Name Change IX**

SECTION 113. Section 44A of chapter 48 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words "public safety" and inserting in place thereof the following:- inspection and regulation.

### **Confirmation of Indigency I**

SECTION 114. Section 21 of chapter 62C of the General Laws, as most recently amended by section 1 of chapter 9 of the acts of 2003, is hereby further amended by inserting after clause (20) the following clause:— (21) the disclosure to the commissioner of probation of information as the commissioner may require for use in determining whether a person who has requested the appointment or assignment of counsel pursuant to chapter 211D is eligible for the services.

### **Alcoholic Beverage Tax Exemption for Military Social Clubs**

SECTION 115. Subsection (c) of section 1 of chapter 63A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following subparagraph:—

(3) An organization which is located within the boundaries of a Massachusetts army or air national guard base that serves as social club for members of the Massachusetts army or air national guard.

### **Tobacco Taxes to Children's and Seniors' Fund I**

SECTION 116. [Section 7 of chapter 64C of the General Laws, as so appearing, is hereby amended by striking out, in lines 25 to 3, inclusive, subsection (c).

### **Tobacco Taxes to Children's and Seniors' Fund II**

SECTION 117. Said chapter 64C, as so appearing, is hereby further amended by striking out section 28 and inserting in place thereof the following new section:-

Section 28. All sums received pursuant to the excise imposed by this chapter, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, shall be credited to the Children's and Seniors' Health Care Assistance Fund, established pursuant to section 2FF of chapter 29.

### **County Government Finance Review Board Membership**

SECTION 118. Section 12 of chapter 64D of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

There shall be established within the executive office for administration and finance a county government finance review board, hereinafter referred to as the "board", consisting of the secretary for administration and finance or his designee, the commissioner of revenue or his designee, the secretary of public safety or his designee, the state auditor or his designee and a former Massachusetts sheriff, appointed by majority vote of the Massachusetts Sheriff's Association. The secretary for administration and finance or his designee shall serve as chairperson of the board.

### **Small Business - 2% Sales Tax Retention I**

SECTION 119. Section 5 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding at the end thereof the following:-

All vendors that collect sales tax shall be entitled to retain an amount equal to 2 per cent of the total amount of sales tax collected in any one calendar year. The total amount so retained in any calendar year by any 1 vendor, when combined with use taxes retained as provided in section 6 of chapter 64I., shall not exceed \$750. The vendor shall retain these amounts by deducting not more than 2 per cent of the sales tax collected during the standard

reporting period. Upon reaching the annual maximum retention amount, the vendor shall not be entitled to deduct any further amount from collected sales taxes until the beginning of the next calendar year.

### **Meals Tax Exemption for Military Social Clubs**

SECTION 120. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by inserting, after the word “ninety-three” , in line 366, the following clause:— ; meals served on the premises of an organization which is located within the boundaries of a Massachusetts army or air national guard base that serves as social club for members of the Massachusetts army or air national guard.

### **Small Business - 2% Sales Tax Retention II**

SECTION 121. Section 6 of chapter 64I of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding at the end thereof the following:-

All vendors that collect use tax shall be entitled to retain an amount equal to 2 per cent of the total amount of use tax collected in any 1 calendar year. The total amount so retained in any calendar year by any 1 vendor, when combined with sales taxes retained as provided in Section 5 of chapter 64H., shall not exceed \$750. The vendor shall retain these amounts by deducting not more than 2 per cent of the use taxes collected during the standard reporting period. Upon reaching the annual maximum retention amount, the vendor shall not be entitled to deduct any further amounts from collected use taxes until the beginning of the next calendar year.

### **Confidentiality of State Employee Home Addresses II**

SECTION 122. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended by striking out the subsection (d) and inserting in place thereof the following subsection:-

(d) The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services, and department of correction personnel shall not be public records in the custody of the employers of those personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of those personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying the persons as falling within the categories and shall not be disclosed.

### **Charter School Tuition**

SECTION 123. Section 89 of chapter 71 of the General Laws, as so appearing, is hereby amended by striking out subsection (nn) and inserting in place thereof the following subsection:-

(nn) Commonwealth charter schools shall be funded as follows: the commonwealth shall pay a tuition amount equal to the actual per pupil spending amount in the sending district for the education as is required by the student, with spending calculated separately for English language learner, special education, and vocational programs, and with spending calculated separately by grade level. In calculating spending by grade level, the department of education shall group grade levels into segments in accordance with the sending district's practice of grouping grade levels, including, but not limited to, the following grade level segments: elementary, middle school, junior high school, junior high-high school, and high school. The state treasurer shall deduct the charter school tuition amount from the total education aid, as defined in chapter 70, of the district in which the student resides before the distribution of the aid. In the case of a child residing in a municipality which belongs to a regional school district, the charter school tuition amount shall be deducted from the chapter 70 education aid of the school district appropriate to the grade level of the child. If, in a single district, the total amount of charter school tuition deductions exceeds the total amount of education aid to be distributed to the district, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all deductions exceeds the total state aid

appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from chapter 70 by accepting section 14 of said chapter 70, the commonwealth shall assess the district for the excess amount. The state treasurer may disburse to each charter school an amount equal to the total amount of tuition for all pupils enrolled in the charter school as calculated above. The board of education shall adopt regulations for determining the actual per pupil spending amount in calculating charter school tuition amounts for the purpose of this subsection, and in adopting the regulations shall consult with the executive office for administration and finance and shall consider the actual cost per student, the variation in cost for different grade levels and different programs, a charter school's capital costs, the advisability of establishing a maximum amount for the average cost, and the impact on existing charter schools, other public schools in a district, and new charter schools.

### **Out-of-District Vocational School Transportation**

SECTION 124. Section 8A of chapter 74 of the General Laws, as amended by section 84 of chapter 46 of the acts of 2003, is hereby further amended by adding the following sentence:— The school committee of the city or town in which the student resides, or the regional vocational or county agricultural school district, city, town, independent school, or collaborative providing the approved vocational-technical program to which the student has been admitted under section 7, shall, subject to appropriation, and upon voting to provide transportation to the student, be eligible for state reimbursement to the maximum extent of 50 per cent of the amounts so expended; but, applicants for the reimbursement shall not charge fees for more than 50 per cent of the cost of said transportation.

### **Transportation Reform XIII**

SECTION 125. Section 1 of chapter 81A, as appearing in the 2002 Official Edition, is hereby amended by striking out the word “not”, in line 3, and inserting in place thereof the following word:- only.

### **Transportation Reform XIV**

SECTION 126. Said section 1 of chapter 81A, as so appearing, is hereby amended, in line 5, by striking out the word “except”.

### **Transportation Reform XV**

SECTION 127. Said chapter 81A, as so appearing, is hereby further amended by striking out section 2, and inserting in place thereof the following section:-

Section 2. The authority shall consist of 5 members to be appointed by the governor who shall be residents of the commonwealth, not more than 3 of whom shall be of the same political party, and at least 1 member at all times shall be a resident of a town which abuts the Massachusetts turnpike and is wholly or partially located between the Weston toll plaza and the interstate route 495 interchange. One of the members shall be the secretary of the executive office of transportation, who shall serve as chairperson of the authority. All members shall have senior management level experience in 1 or more of the following areas: engineering, construction, business, public or private finance, and transportation. A member of the authority shall be eligible for reappointment. Prior to entering upon the duties of his office, each member of the authority shall take an oath before the governor to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the state secretary.

The members of the authority who began in office prior to July 31, 2002 shall continue until December 31, 2005. The members of the authority appointed after July 31, 2002 shall continue for the remainder of their respective terms. The successor of each member shall be appointed for a term of 5 years; provided, however, that any person appointed to fill a vacancy shall serve only for the unexpired term; provided further that, of the 2 members appointed after July 31, 2002, 1 shall serve for an initial term of 6 years and 1 shall serve for an initial term of 3 years but all successive terms for such members shall be for a term of 8 years.

The authority shall elect 1 of the members as vice chairperson thereof. Three members of the authority, including the chairperson, shall constitute a quorum and the affirmative vote of 3 members shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. The members shall serve without pay. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties.

The authority shall have the power to appoint and employ officers, including an executive director, and to fix their compensation and conditions of employment. The authority may bind itself by contract to employ not more than 5 senior officers and no such contract shall be for a period of more than 5 years; and provided further that the salary of the executive director shall not exceed the salary of the Commissioner of Highways. The authority shall annually, on or before January first, submit to the secretary of administration and finance and the house and senate committees on ways and means a schedule of salaries of all its employees and any proposed increases therein. The secretary may make recommendations to the authority on the salary structure and shall advise the authority of the prevailing rates that the commonwealth pays for similar services.

The executive director of the authority shall report to the secretary of transportation on a regular basis to assist the secretary in coordinating the transportation agenda of the commonwealth.

The authority may indemnify any member, officer or employee from personal expenses or damages incurred, arising out of any claim, suit, demand or judgment which arose out of any act or omission of such member, officer or employee, including the violation of the civil rights of any person under any federal law if, at the time of such act or omission such member, officer or employee was acting within the scope of his official duties or employment.

### **Transportation Reform XVI**

SECTION 128. Section 4 of said chapter 81A, as so appearing, is hereby further amended by striking out clause (e) and inserting in place thereof the following clause:-

(e)(i) to own, construct, maintain, repair, reconstruct, improve, rehabilitate, use, police, administer, control and operate the turnpike or any part thereof; (ii) consistent with agreements entered into with the highway department to the extent applicable, to own, construct, maintain, repair, reconstruct, improve, rehabilitate, use, police, administer, control and operate the metropolitan highway system or any part thereof, as it may determine; and (iii) effective October 1, 2004, to maintain, repair, police, administer and operate interstate highway route 395, interstate highway route 84 and interstate highway route 291; provided, however, that chapter 91 shall not apply to the authority, except for any parts or areas thereof subject to said chapter 91 on March 1, 1997;

### **Transportation Reform XVII**

SECTION 129. Section 10 of said chapter 81A, as so appearing, is hereby amended by inserting after the word "turnpike", in line 11, the following words:-

as well as the costs of maintaining, repairing, using, policing, administering and operating interstate highway route 395, interstate highway route 84 and interstate highway route 291.

### **Department of Public Safety Name Change X**

SECTION 130. Section 24 of chapter 81A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 3 and 4, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

### **Department of Public Safety Name Change XI**

SECTION 131. Section 1 of chapter 82A of the General Laws, as so appearing, is hereby amended by striking out, in lines 4, 17, 28 and 33, the words "public safety", each time they appear, and inserting in place thereof, in each instance, the following words:- inspection and regulation.

### **Department of Public Safety Name Change XII**

SECTION 132. Section 2 of said chapter 82A, as so appearing, is hereby amended by striking out, in line 6, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

### **Department of Public Safety Name Change XIII**

SECTION 133. Section 3 of said chapter 82A, as so appearing, is hereby amended by striking out, in lines 16, 28 and 32, the words "public safety", each time they appear, and inserting in place thereof, in each instance, the following words:- inspection and regulation.

### **Stormwater Improvements I**

SECTION 134. Section 1 of chapter 83 of the General Laws, as so appearing, is hereby amended by inserting after the word “drainage”, in line 6, the following words:— stormwater treatment and disposal,.

### **Stormwater Improvements II**

SECTION 135. The first paragraph of said section 1 of said chapter 83, as so appearing, is hereby amended by inserting after the second sentence the following sentence:— The works for drainage may include a stormwater treatment facility or measure of treating, or removing sediment or contaminants from, stormwater discharges.

### **Stormwater Improvements III**

SECTION 136. Said first paragraph of said section 1 of said chapter 83, as so appearing, is hereby further amended by adding the following sentence:- For the purposes of this chapter, the word ‘stormwater’ shall mean surface runoff from precipitation.

### **Stormwater Improvements IV**

SECTION 137. Section 10 of said chapter 83, as so appearing, is hereby amended by adding after the first sentence the following sentence:— A city, town, sewer district, or a district established for the purpose of managing stormwater, pursuant to section 1A of chapter 40, may from time to time prescribe rules and regulations for the use of main drains and the management of stormwater to prevent the discharge of sediment and pollutants therein which may tend to degrade wetlands, streams, other surface water bodies, and groundwater and to inspect the facilities for the collection and infiltration of stormwater in order to reduce flooding and improve the quality of and decrease the quantity of stormwater runoff; for the connection of estates and buildings with main drains; for the construction, alteration, and use of all connections entering into such main drains; and for the inspection of all materials used therein; and may prescribe civil penalties, not exceeding \$5,000 for each day of violation of a rule or regulation.

### **Stormwater Improvements V**

SECTION 138. Section 16 of said chapter 83, as so appearing, is hereby amended by inserting after the word “sewers”, in line 3, the following words:— and main drains and related stormwater facilities.

### **Stormwater Improvements VI**

SECTION 139. Said section 16 of said chapter 83, as so appearing, is hereby further amended by adding the following 3 sentences:— In establishing quarterly or annual charges for the use of main drains and related stormwater facilities, the city, town, or district may either charge a uniform fee for residential properties and a separate uniform fee for commercial properties or establish an annual charge based upon a uniform unit method; but, the charge shall be assessed in a fair and equitable manner. The annual charge shall be calculated to supplement other available funds as may be necessary to plan, construct, operate and maintain stormwater facilities and to conduct stormwater programs. The city, town or district may grant credits against the amount of the quarterly or annual charge to those property owners who maintain on-site functioning retention/detention basins or other filtration structures as approved by the stormwater utility, conservation commission, or other governmental entity with appropriate authority.

### **Allowing Use of Federal Surplus Vehicles I**

SECTION 140. Section 1 of Chapter 90 of the General Laws, as so appearing, is hereby amended by striking out the definition of “Owner” and inserting in place thereof the following definition:-

“Owner”, a person, other than a lien holder, having title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security and a bailee of any description; but, the term shall include the commonwealth and its political subdivisions for the purpose of registering a vehicle that is on loan from the United States or from a motor vehicle manufacturer or distributor.

### **Fallen Firefighter Memorial Fund License Plate**

SECTION 141. Subsection (c) of section 2F of said chapter 90, as so appearing, is hereby further amended by inserting after the word “nurses”, in line 63, the following words:- the Fallen Firefighter Memorial Fund to be coordinated by the Professional Firefighters of Massachusetts;.

### **Commercial Vehicle Regulations**

SECTION 142. Said chapter 90 is hereby amended by inserting after section 19J, as so appearing, the following section:-

Section 19K. (a) The registrar shall promulgate rules and regulations to ensure compliance by all interstate and intrastate motor carriers with this chapter and with:

(1) the regulations of the United States Department of Transportation, Federal Motor Carrier Safety Administration, contained in Title 49 of the Code of Federal Regulations relative to:

- (i) proof of financial responsibility;
- (ii) driver qualification files (including all required forms);
- (iii) drug and alcohol testing records as applicable;
- (iv) records of duty status and supporting documents;
- (v) driver vehicle inspection reports and maintenance records;
- (vi) hazardous materials records as applicable; and
- (vii) an accident register and copies of all accident reports required by state or other governmental entities or insurers.

(2) sections 2, 3, 9 and 10 relative to operator licensing and registration of commercial vehicles;

(3) section 2B of chapter 85, section 31 of chapter 90, and any regulation established thereunder relative to transportation of freight, passengers or hazardous materials;

(4) chapter 90F, relative to the operation of commercial vehicles; and

(5) any other applicable state statute pertaining to the operation of commercial motor vehicles.

(b) The department of state police may enter, during regular business hours, the commercial premises owned or leased by a commercial carrier, wherein the records, required to be maintained under the regulations established under this section, are stored or maintained and inspect, in a reasonable manner, the records for the purpose of enforcing the regulations. If the records contain evidence of violations of the regulations, the inspecting officer shall produce and take possession of copies of the records, and in the event that the entity subject to inspection does not possess copying equipment, the inspecting officer shall arrange to have copied, in a reasonable time and manner, the records that contain evidence of the violations, and the costs for the copying shall be assessed against the owner of said records.

(c) Any carrier found to be in violation of regulations established under this section shall be subject to a civil penalty not to exceed \$500 for each offense, and each day of a violation shall constitute a separate offense; provided, however, that the total of all civil penalties assessed against a violator for all offenses relating to any single violation shall not exceed \$2,500. If it is found that a serious pattern of safety violations, other than record keeping requirements, exists or has occurred, a civil penalty not to exceed \$1,000 may be imposed for each offense; provided, however, that the maximum fine for each such pattern of safety violations shall not exceed \$10,000. If it is found that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, a civil penalty not to exceed \$10,000 for each offense may be imposed. With the exception of record keeping violations and violations of chapter 90F or such other regulations established under this section relating to commercial driver's licenses, as defined in section 1 of chapter 90F, no civil penalty shall be imposed under this section against an employee of a motor carrier for a violation unless the employee's conduct is found to constitute gross negligence or reckless disregard for safety, in which case the employee shall be subject to a civil penalty not to exceed \$1,000. A person found to have committed an act in violation of chapter 90F or regulations established under this section relating to commercial driver's licenses shall be subject to a civil penalty not to exceed \$2,500 for each offense.

(d) The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by a court of competent jurisdiction, and all penalties so recovered shall be paid to the Highway Fund of the commonwealth.

### **Allowing Use of Federal Surplus Vehicles II**



SECTION 143. Section 2 of chapter 90D of the General Laws, as so appearing, is hereby amended by inserting after the word “ninety”, in line 3, the following words:- : provided, that a vehicle on loan from the United States or from a motor vehicle manufacturer or distributor to the commonwealth or a political subdivision thereof, may be registered by the commonwealth or political subdivision, or by an agency of the commonwealth or a political subdivision that the loaned vehicle has been re-assigned to, without the need to apply for a certificate of title, if the registrant is in possession of a written agreement evidencing the vehicle loan and the agreement is signed by an authorized employee of the United States government agency or motor vehicle manufacturer or distributor providing the vehicle, or if re-assigned from an agency of the commonwealth or a political subdivision, it is signed by an authorized employee of the agency or political subdivision of the commonwealth which received the vehicle from the United States or motor vehicle manufacturer or distributor and re-assigned it to the registrant.

#### **Office of Environmental Law Enforcement Technical Change**

SECTION 144. Section 10C of chapter 91 of the General Laws, as so appearing, is hereby amended by striking out, in line 24, the word “division” and inserting in place thereof the following word:— office.

#### **Waterways Licensing Process Change**

SECTION 145. The third paragraph of section 18 of said chapter 91, as so appearing, is hereby amended by inserting adding the following sentence:- Notwithstanding any provision of this chapter to the contrary, the department may grant a general license, approved and signed by the commissioner, that regulates docks, piers and other small scale, water dependent structures accessory to a residential use or serving as a noncommercial community docking facility, and shall establish in regulation procedures and standards to administer said general licenses, as considered appropriate by the department.

#### **Transportation Reform XVIII**

SECTION 146. Section 35 of chapter 92, as amended by sections 246 and 247 of chapter 26 of the acts of 2003, is hereby further amended by inserting the following:-

Notwithstanding the foregoing, nothing in this section shall be construed as prohibiting the division or the department from entering into an interagency or other agreement with a state or public agency or entity concerning the construction, maintenance, repair, operation of the roadways and boulevards, or any matters incidental thereto.

#### **DCR Licensing of Restricted Vehicles I**

SECTION 147. Said chapter 92 of the General Laws, as most recently amended by chapter 26 of the acts of 2003, is hereby further amended by inserting after section 35A the following new section:-

Section 35B. (a) No person shall operate a truck, bus, motor home, camper, tractor, trailer, semi-trailer or any other motor vehicle with a seating capacity of more than 15 persons on a road, driveway, parkway, boulevard or bridge under the jurisdiction of the division of urban parks and recreation that is restricted to pleasure vehicles only without a permit from the division; provided that light duty trucks, having a gross vehicle weight of 10,000 pounds or less and a maximum overall height of 7 feet or less may be operated on such roadway.

(b) As used in this section, “permit” shall mean a written permit by the division. A permit shall only be granted if the division determines that granting a permit serves the public need and after completion of a formal permitting process to be established by the division, which shall require that:

(1) a party seeking a permit submit a written application to the division that provides the grounds for which the permit is being sought and a comprehensive description of the anticipated activity;

(2) the division hold at least 1 public hearing concerning the public need for the permit;

(3) the division provide the local governing body of each impacted community a copy of the permit application at least 30 days before the public hearing;

(4) the division, within 180 days from receipt of a permit application, notify in writing the permit applicant and the local governing body of each impacted community of its decision to either grant or refuse to grant the permit; and

(5) the division provide to the permit applicant and the local governing body of each impacted community, within 10 days of notification of its decision, written findings that set forth the reasons for its decision to either grant or refuse to grant the permit.

(c) Notice of the time and place of a public hearing held under this section shall be given by the division, at the expense of the party who submitted the application, not less than 14 days before the hearing by publication in a newspaper of general circulation in the impacted city or town and by first class mail to the local governing body of the impacted city or town.

(d) A permit issued under this section shall be revocable at will by the division and shall be nontransferable by the holder. The division may assess a reasonable fee upon the receipt of a permit application. All funds collected under this subsection shall be deposited in the General Fund.

(e) Judicial review shall be governed by section 14 of chapter 30A to the extent not inconsistent with this section.

(f) A person who violates subsection (a) shall be subject to an administrative fine of not less than \$100 nor more than \$500.

### **DCR Licensing of Restricted Vehicles II**

SECTION 148. Section 37 of said chapter 92, as amended by section 253 of said chapter 26, is hereby further amended by striking out, in the first sentence, the words “or boulevards” and inserting in place thereof the following words:-, roads, driveways, parkways, boulevards or bridges.

### **Establishing the Water Supply Protection Trust II**

SECTION 149. Section 11 of chapter 92A1/2 of the General Laws, as appearing in section 290 of chapter 26 of the acts of 2003, is hereby amended by striking out the fifth sentence and inserting in its place the following sentence:- Within 30 days of receipt of the department bill, the treasurer of the authority shall remit the total billed amount to the Water Supply Protection Trust, established in section 73 of chapter 10.

### **Establishing the Water Supply Protection Trust III**

SECTION 150. Said section 11 of said chapter 92A1/2, as so appearing, is hereby further amended by striking out the seventh sentence and inserting in its place the following sentence:- The commissioner of the department shall forward to the treasurer of the commonwealth the revenues generated by the division which shall be credited to the Water Supply Protection Trust, established in section 73 of chapter 10.

### **Establishing the Water Supply Protection Trust IV**

SECTION 151. Section 12 of said chapter 92A1/2, as so appearing, is hereby amended by striking out the second sentence and inserting in its place the following 2 sentences:- The revenue shall be deposited into the Water Supply Protection Trust established in section 73 of chapter 10 for the purposes of meeting said debt service costs. The comptroller shall transfer to the general fund from the Water Supply Protection Trust that portion of annual assessments against the Massachusetts water resources authority identified as reimbursement for debt service payments that have been previously charged to the General Fund.

### **Hepatitis C Program**

SECTION 152. Chapter 111 of the General Laws is hereby amended by inserting after section 4L the following section:-

Section 4M. (a) The department shall, subject to appropriation, establish and maintain a program to mitigate the impacts of hepatitis C. The program shall provide screening, information, education and treatment components, and may include research grants. The program shall increase public awareness of hepatitis C and such efforts shall be undertaken in multiple languages and in a culturally appropriate manner. The program shall provide information to health care providers about risks, available prevention methods, and treatment options for hepatitis C.

(b) The program, to the extent the department determines feasible and appropriate, shall be integrated with substance abuse, HIV/AIDS and sexually transmitted disease service programs.

(c) The department may accept for the purposes of the program any special grant of money, services or property from the federal government or any of its agencies or from any foundation, medical school or other organization.

### **Department of Public Safety Name Change XIV**

SECTION 153. Section 51 of said chapter 111, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 90, 95 and 96, 97, 100 and 103, the words "public safety", each time they appear, and inserting in place thereof, in each instance, the following words:- inspection and regulation.

### **Department of Public Safety Name Change XV**

SECTION 154. Section 71 of said chapter 111, as so appearing, is hereby amended by striking out, in lines 90 and 91, 99, 100 and 107, the words "public safety", each time they appear, and inserting in place thereof, in each instance, the following words:- inspection and regulation.

### **Family Councils in Nursing Homes**

SECTION 155. Said chapter 111 is hereby amended by adding after section 72Y the following section:—

Section 72Z. (a.) No licensed skilled nursing facility or intermediate care facility may prohibit the formation of a family council and when requested by a member of the resident's family or the resident's representative, the family council shall be allowed to meet in a common meeting room of the facility at least once a month during the mutually agreed upon hours.

(b.) For the purpose of this section "Family council" means a meeting of family members, friends or representatives of 2 or more residents to confer in private without facility staff.

(c.) The facility will inform family members upon the admission of a resident of their right to form a family council. The facility shall not deny a family council the opportunity to accept help from an organization or individual outside of the facility.

(d.) Facility policies on family councils shall in no way limit the rights of residents, family members, and family council members to meet independently with outside persons including members of non-profit or governmental organizations or with facility personnel during non-working hours.

(e.) Family councils shall also be provided adequate space on a prominent bulletin board or other posting area for the display of meeting notices, minutes, newsletter or other information pertaining to the operating of family councils.

(f.) The facility shall not prevent or interfere with the family council receiving outside correspondence which is addressed to the council. Family council mail shall be delivered unopened to the governing body or contact person of the council.

(g.) Staff or visitors may attend family council meetings at the group's invitation.

(h.) The facility shall provide a designated staff person who shall be responsible for providing assistance to the family council ,if requested by the council, and responding to written requests that result from family council meetings.

(i.) The facility shall consider the views and act upon the grievances and recommendations of the family council concerning proposed policy and operational decisions affecting residents care and life at the facility.

(j.) The facility shall respond in writing to written requests or concerns of the family council within 5 working days.

(k.) When a family council exists, the facility shall include notice of the family council in at least a quarterly mailing. During the admission process, the facility shall also inform family members or representatives of new residents, who are identified on the admissions agreement, or in the resident's records, of the existence of a family council. The notice shall include the time, place and date of meeting and the person to contact regarding involvement in the family council.

(l.) No facility shall willfully interfere with the formation, maintenance or promotion of family council. The willful interference with a family council shall include, but not be limited to, discrimination or retaliation in any way against an individual as a result of his/her participation in a family council or the willful scheduling of facility events in conflict with previously scheduled family council meetings.

(m.) A violation of this section will constitute a violation of resident rights. The Department of Public Health shall impose a civil penalty upon any person who violates this section and shall promulgate such regulations as may be necessary to implement this section.

### **Stem Cell Research I**

SECTION 156. Subsection (a) I of section 12J of said chapter 112, as so appearing, is hereby amended by adding the following paragraph:-

For the purposes of this section, “fetus” shall include a neonate and an embryo, but shall exclude an embryo donated to medicine pursuant to section 12EE.

### **Stem Cell Research II**

SECTION 157. Subsection (a) IV of said section 12J of said chapter 112, as so appearing, is hereby amended by striking out the second sentence.

### **Stem Cell Research III**

SECTION 158. Chapter 112 of the General Laws is hereby amended by inserting after section 12CC the following 2 sections:-

Section 12DD. The general court finds and declares that:

(1) Human embryonic stem cell research, and other research in regenerative medicine present a significant chance of yielding fundamental biological knowledge from which may emanate therapies to relieve, on a large scale, human suffering from disease and injury; and

(2) The extraordinary biomedical scientists situated within institutions of higher education, research institutes, hospitals and biotechnology and pharmaceutical companies possess the capability of contributing significantly to the welfare of mankind by performing outstanding research in this field.

Section 12EE. (a) For the purposes of this section and section 12DD, the following words shall have the following meanings unless the context clearly requires otherwise:

“Donated to medicine”, human embryonic stem cells, human embryonic germ cells, placental and umbilical cord cells and any human adult stem cells if, in the absence of financial inducement and after fulfillment of the requirements of applicable federal and state laws concerning informed consent, a person from whose body the donation originates gives the cells to another under instructions that the recipient shall use such donation in biomedical research or to pursue medical care or treatment.

“Embryo”, a human conceptus, whether formed by fertilization, somatic cell nuclear transfer or parthenogenesis.

“Financial inducement”, any valuable consideration, excluding: (i) reimbursement for reasonable costs incurred in connection with a donation; and (ii) reasonable compensation to a donor from whom an oocyte is recovered and to a donor of any other cell recovered by an invasive procedure for the time, burden and risk of such recovery and the preparation for it.

“Uterus”, a uterus, artificial uterus or fallopian tube.

(b) It shall be the policy of the commonwealth to foster research and therapies in regenerative medicine, including, in particular, that research and clinical applications involving the derivation and use of human embryonic stem cells, human embryonic germ cells, placental and umbilical cord cells and any human adult stem cells donated to medicine, including research and clinical applications involving somatic cell nuclear transplantation, shall be permitted.

(c) No person shall use an human embryo donated to medicine in a scientific research or other kind of experimentation or study without the prior written approval of a duly appointed Institutional Review Board setting forth the approval of the Board for the research, experimentation or study. The written approval shall contain a detailed description of the research, experimentation or study by attachment of a protocol or other writing and shall be maintained as a permanent record by the board or by the hospital or other institution for which the Board acts.

(d) An embryo donated to medicine, pursuant to this section, shall not be transferred to a uterus.

(e) Human procreative cloning is hereby prohibited.

(f) A person who violates subsections (d) or (e) shall be punished by imprisonment in a jail or house of correction for not less than 1 year nor more than 2 years or by imprisonment in the state prison for not more than 5 years and by the imposition of a fine of up to \$25,000.

### **Division of Professional Licensure Oversight II**

SECTION 159. Section 61 of said chapter 112, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs: --

Except as otherwise provided by law, a board of registration within the executive office of consumer affairs and business regulation may, by majority vote and upon determination made after a hearing that the holder of a license, certificate, registration or authority issued by the respective board is guilty of any of the offenses enumerated in this section, undertake the following actions:

- (1) suspend, revoke, cancel or place on probation such license, certificate, registration or authority;
- (2) reprimand or censure a holder;
- (3) assess upon the holder a fine not to exceed \$5,000 for each violation;
- (4) require the holder to perform, for each such violation, up to 100 hours of public service in a manner and time to be determined by the board;
- (5) require the holder to complete additional education and training as a condition of retention or future consideration of reinstatement of the license, certificate, registration or authority;
- (6) require the holder to practice under appropriate supervision for a period of time as determined by the board as a condition of retention or future consideration of reinstatement of said license certificate, registration or authority;
- (7) require the holder to participate in an alcohol or drug rehabilitation program or undergo drug testing, or both, as a condition of retention or future consideration of reinstatement of the license, certificate, registration or authority; and
- (8) require restitution of not more than \$10,000, where appropriate.

Each board of registration may discipline the holder of a license, certificate, registration or authority if the holder has:

- (1) been found guilty of conduct which places into question the holder's competence to practice his profession including, but not limited to, misconduct in the practice of his profession, practicing the profession fraudulently or beyond its authorized scope or practicing with gross incompetence, or practicing with negligence on more than 1 occasion;
- (2) been found guilty of practicing his profession while his ability to practice was impaired by alcohol, drugs, physical disability or mental instability;
- (3) been found guilty of violating any law, rule or regulation of the board governing the practice of his profession;
- (4) been convicted of a criminal offense which reasonably calls into question the holder's ability to practice his profession;
- (5) been found guilty of dishonesty, fraud or deceit which is reasonably related to the practice of his profession;
- (6) been found guilty of knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license, certificate, registration or authority; or
- (7) has had a license, certificate, registration or authority issued by another state or territory of the United States, the District of Columbia, a foreign state or nation with authority to issue such a license, certificate, registration or authority revoked, canceled or suspended, not renewed, or otherwise acted against, or the holder has been disciplined, if the basis for the action would constitute a basis for disciplinary action in the commonwealth.

Nothing in this section shall limit a board's authority to impose reasonable sanctions as deemed appropriate by the board after a hearing or by a consent agreement.

### **Division of Professional Licensure Oversight III**

SECTION 160. Section 64 of said chapter 112, as so appearing, is hereby amended by striking out, in line 5 the figure "(8)" and inserting in place thereof the following figure:- (7).

### **Division of Professional Licensure Oversight IV**

SECTION 161. Said section 64 of said chapter 112, as so appearing, is hereby further amended by adding the following sentence:— Where a statute provides that a court other than the supreme judicial court may review a board's action, such review shall be conducted in accordance with the standards of review provided in said paragraph (7) of said section 14 of said chapter 30A.

### **Division of Professional Licensure Oversight V**

SECTION 162. Section 65 of said chapter 112, as so appearing, is hereby amended by striking out, in line 5, the words “one thousand dollars” and inserting in place thereof the following figure:- \$10,000.

#### **Division of Professional Licensure Oversight VI**

SECTION 163. Said chapter 112 is hereby further amended by inserting after section 65 the following 5 sections:-

Section 65A. Each board of registration within the division of professional licensure may, after opportunity for a hearing, assess and collect a civil administrative penalty of up to \$5,000 for each violation upon a person who practices a trade or profession at a time when his license, certificate, registration or authority to do so from that board is not valid because it has been suspended, revoked or canceled under this chapter or because it has expired. The penalty shall be in addition to all other penalties and remedies that may be provided by law. A board may apply to the appropriate court for a restraining order enjoining such unlicensed practice or for an order for payment of an assessed penalty, or both, and may obtain such other orders as may be appropriate. All penalties collected shall be deposited in the Division of Professional Licensure Trust Fund established under subsection (a) of section 35V of chapter 10.

Section 65B. Each board of registration within the division of professional licensure may, after opportunity for a hearing, assess and collect a civil administrative penalty of up to \$5,000 for each violation upon a person who, without holding the required license, certificate, registration or authority from that board, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required. The penalty shall be in addition to all other penalties and remedies that may be provided by law. A board may apply to the appropriate court for a restraining order enjoining such unlicensed practice or for an order for payment of an assessed penalty, or both, and may obtain such other orders as may be appropriate. All penalties collected shall be deposited in the Division of Professional Licensure Trust Fund, established under subsection (a) of section 35V of chapter 10.

Section 65C. Each board of registration which has jurisdiction over a licensee whose continued practice poses an immediate and serious threat to the public health, safety or welfare may suspend or refuse to renew the holder's license, certificate, registration or authority pending a hearing on the merits, but the board shall hold a hearing pursuant to chapter 30A on the necessity for the emergency action within 7 days of the action. The board shall issue to the licensee a written order of summary suspension which shall specify the findings of the board and the reasons for its summary suspension and shall include a notice of the date, time and place of the hearing. At the request of a licensee, the board may reschedule the hearing to a date and time mutually agreeable to the board and the licensee. Any such rescheduling of a hearing granted at the licensee's request shall not operate to lift or stay the summary suspension order. If a hearing is not held within 7 days of the board's emergency action, the license, certificate, registration or authority against which action was taken shall be considered reinstated. At the adjudicatory hearing on the necessity for summary suspension, the board shall receive evidence limited to determining whether the summary suspension order shall continue in effect pending the final disposition of the complaint. Following the hearing, a continuing suspension imposed by a board shall remain in effect until the conclusion of any formal proceedings on the merits of the allegations against the holder, including a judicial review thereof, or until withdrawn by the board. The division, after proper notice and hearing, shall adopt rules and regulations governing the emergency suspension procedure authorized by this section.

Section 65D. Any complaint, report, record or other information received or kept by a board of registration within the division of professional licensure in connection with an investigation shall be considered a public record only following the issuance of an order to show cause or final action by the board. Before issuing an order to show cause or final action, each board may keep confidential any complaint, report, record or other information received or made in connection with an investigation conducted by the board, but the identity of the person filing a complaint shall be exempt from disclosure as a public record at all times, except to the extent that a licensee may be entitled to such information for purposes of preparing a defense in a formal adjudicatory hearing. The requirement that investigative records or information be kept confidential shall not apply to requests from other state or federal agencies, boards or institutions as the division shall determine by regulation.

Meetings of the boards held for the purpose of conducting investigative conferences related to a complaint shall not be considered open meetings within the meaning of section 11A ½ of chapter 30A.

Section 65E. After a complaint has been filed with a board of registration alleging that a holder of a license, certificate, registration or authority issued by that board may be incompetent or unable to practice his profession or trade with reasonable skill and safety because the holder's ability to practice is impaired due to mental illness or physical illness, the board may order the holder to be examined by one or more physicians or psychotherapists approved by the board at the board's expense. If the individual fails or refuses to comply with an order of the board

for such examination and upon reasonable notice to the holder, the board may apply to the superior court for an order compelling the holder to submit to an examination. If the board's application is granted, the court may, after opportunity for hearing, require the individual to pay to the board its reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds an award of expenses unjust. The holder's failure to comply with a court order issued under this section shall constitute grounds for disciplinary action by the board including, but not limited to, the sanctions provided in section 61. The report of the examiners shall be made available to the holder and may be received as direct evidence in formal adjudicatory proceedings. The report shall remain confidential except to the extent it is disclosed in such proceedings.

#### **Cremation of Bodies Requirement**

SECTION 164. Section 44 of chapter 114 of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The body of a deceased person shall not be cremated within 48 hours after his decease unless he died of a contagious or infectious disease, and, if the death occurred within the commonwealth, the body shall not be cremated by any corporation authorized to cremate the bodies of the dead until its officers have received the certificate or burial permit required by law before burial, and a certificate from a medical examiner or similarly authorized person that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination or judicial inquiry concerning the same is necessary.

#### **Requiring Public Hearing for Medicaid Regulations**

SECTION 165. The fourth paragraph of section 12 of chapter 118E of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Regulations that restrict coverage or covered services shall be adopted only after public notice and hearing.

#### **Pediatric Hospital/Pediatric Specialty Unit I**

SECTION 166. Section 1 of chapter 118G of the General Laws is hereby amended by inserting after the definition of "Payments subject to surcharge", as so appearing, the following 2 definitions:-

"Pediatric hospital", an acute care hospital which limits services primarily to children and which qualifies as exempt from the Medicare Prospective Payment system regulations.

"Pediatric specialty unit", a pediatric unit of an acute care hospital in which the ratio of licensed pediatric beds to total licensed hospital beds as of July 1, 1994, exceeded 0.20. In calculating that ratio, licensed pediatric beds shall include the total of all pediatric service beds, and the total of all licensed hospital beds shall include the total of all licensed acute care hospital beds, consistent with Medicare's acute care hospital reimbursement methodology as put forth in the Provider Reimbursement Manual Part 1, Section 2405.3G.

#### **Pediatric Hospital/Pediatric Specialty Unit II**

SECTION 167. Section 11 of said chapter 118G is hereby amended by inserting after the word "hospital", in line 27, as so appearing, the following words:- pediatric hospital, pediatric specialty unit.

#### **ICF/MR Assessment I**

SECTION 168. Section 18 of said chapter 118G, as so appearing, is hereby amended by inserting the following paragraph:

(p) Within the Uncompensated Care Trust Fund, there shall be established a department of mental retardation transfer account, administered by the secretary of health and human services, consisting of any receipts from the assessment collected pursuant to section 27 of chapter 118G of the general laws, including transfers by the department of mental retardation of amounts sufficient to pay the assessment for public facilities, any federal financial participation received by the commonwealth as a result of expenditures funded by such assessments, and any interest thereon. The secretary may authorize expenditures of amounts from such account without further appropriation. The comptroller shall transfer no later than the first business day of each quarter, the amounts indicated by the department of mental retardation to provide the appropriate payment adjustments for operating the intermediate care facilities for the mentally retarded and the community residences serving individuals with mental

retardation. The comptroller shall establish such procedures as may be necessary to accomplish the purpose of this section, including procedures for the proper transfer, accounting and expenditures of funds under this section. The comptroller may make payments in anticipation of receipts and shall establish procedures for reconciling overpayments and underpayments from said account. The secretary shall account for revenue and expenditure activity within said account.

## **ICF/MR Assessment II**

SECTION 169. Chapter 118G of the General Laws is hereby amended by adding the following section:—

Section 27. (a) For the purposes of this section, the following terms shall have the following meanings: "Assessment," the user fee imposed pursuant to this section

"Intermediate care facility for the mentally retarded or ICF/MR," a privately or publicly operated intermediate care facility for the mentally retarded.

"Community based residence," a privately or publicly operated community based residence serving individuals with mental retardation licensed or certified in accordance with section 15 of chapter 19B.

"Bed day," a day of services provided to an individual living in an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation.

(b) Each intermediate care facility for the mentally retarded and each community-based residence serving individuals with mental retardation shall pay an assessment per bed day. The assessment shall be implemented as a broad-based health care related fee as defined in 42 U.S.C. § 1396b(w)(3)(B). The assessment shall be imposed at a uniform rate and shall be sufficient in the aggregate to generate an amount equal to six per cent of the total gross revenues generated by all such facilities in each fiscal year. The assessment shall be paid to the division at least quarterly. The division may promulgate regulations that authorize the assessment of interest on any unpaid liability at a rate not to exceed an annual rate of 18 per cent and late fees at a rate not to exceed 5 per cent per month. The receipts from the assessment, any federal financial participation received by the commonwealth as a result of expenditures funded by these assessments and interest thereon shall be credited to an account established within the Uncompensated Care Trust Fund.

(c) The commissioner shall prepare a form on which each ICF/MR and each community based residence shall report its total bed days and shall calculate the assessment due. The commissioner shall distribute the forms to each intermediate care facility for the mentally retarded and each community based residence for individuals with mental retardation at least annually. The failure to distribute the form or the failure to receive a copy of the form shall not stay the obligation to pay the assessment by the date specified in this section. The division may require additional reports, including but not limited to monthly census data, as it deems necessary to monitor collections and compliance.

(d) The division shall have the authority to inspect and copy the records of an ICF/MR or community residence for the purposes of auditing its calculation of the assessment. In the event that the division determines that an ICF/MR or a community-based residence has either overpaid or underpaid the assessment, the division shall notify the ICF/MR or the community based residence of the amount due or refund the overpayment. The division may impose per diem penalties if an ICF/MR or a community-based residence fails to produce documentation as requested by the division.

(e) In the event that an ICF/MR or a community based residence is aggrieved by a decision of the division as to the amount due, the ICF/MR or the community based residence may file an appeal to the division of administrative law appeals within 60 days of the notice of underpayment or the date the notice was received, whichever is later. The division of administrative law appeals shall conduct each appeal as an adjudicatory proceeding pursuant to chapter 30A, and an ICF/MR or a community based residence aggrieved by a decision of the division of administrative law appeals shall be entitled to judicial review pursuant to section 14 of said chapter 30A.

(f) The division shall establish by regulation appropriate mechanisms for enforcing this section. Such enforcement may include notification to the department of mental retardation to take appropriate actions, including the revocation of licensure or certification for failure to remit delinquent fees.

(g) The division, in consultation with the department of mental retardation and the division of medical assistance, shall promulgate regulations necessary to implement this section.

## **Enforcement of Child Abuse Reporting Requirements**



SECTION 170. Section 51A of chapter 119 of the General Laws, as so appearing, is hereby amended by striking out, in lines 46 and 67, the words "one thousand dollars" and inserting in place thereof, in each instance, the following words:- \$25,000 or by imprisonment in the house of correction for not more than 2½ years, or both.

#### **Department of Public Safety Name Change XVI**

SECTION 171. Section 26 of chapter 121B of the General Laws, as so appearing, is hereby amended by striking out, in line 109, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Natural Heritage and Endangered Species Fund**

SECTION 172. Chapter 131A of the General Laws is hereby amended by adding the following section:-  
Section 7. The director may establish fees for environmental review and assessment pursuant to this chapter, the amount of which shall be determined in accordance with section 3B of chapter 7. Monies received by the commonwealth from fees collected under this chapter shall be credited to the Natural Heritage and Endangered Species Fund, established by section 35D of chapter 10.

#### **Department of Public Safety Name Change XVII**

SECTION 173. Section 180C of chapter 140 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 21, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XVIII**

SECTION 174. Section 205A of said chapter 140, as so appearing, is hereby amended by striking out, in lines 5 and 50, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XIX**

SECTION 175. Section 17 of chapter 142 of the General Laws, as so appearing, is hereby amended by striking out, in lines 20 and 25, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XX**

SECTION 176. Section 1 of chapter 143 of the General Laws, as so appearing, is hereby amended by striking out, in lines 15 and 16, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XXI**

SECTION 177. Section 62A of said chapter 143, as so appearing, is hereby amended by striking out, in line 6, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XXII**

SECTION 178. Section 68 of said chapter 143, as so appearing, is hereby amended by striking out, in lines 8 and 9, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

#### **Department of Public Safety Name Change XXIII**

SECTION 179. Section 71B of said chapter 143, as so appearing, is hereby amended by striking out, in line 14, the words "public safety" and inserting in place thereof the following:- inspection and regulation.

**Department of Public Safety Name Change XXIV**

SECTION 180. Section 72 of said chapter 143, as so appearing, is hereby amended by striking out, in line 7, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXV**

SECTION 181. Section 73 of said chapter 143, as so appearing, is hereby amended by striking out, in line 3, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXVI**

SECTION 182. Section 84 of said chapter 143, as so appearing, is hereby amended by striking out, in line 4, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXVII**

SECTION 183. Section 85 of said chapter 143, as so appearing, is hereby amended by striking out, in line 2, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXVIII**

SECTION 184. Section 93 of said chapter 143, as so appearing, is hereby amended by striking out, in lines 2 and 8, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

**Department of Public Safety Name Change XXIX**

SECTION 185. Section 100 of said chapter 143, as so appearing, is hereby amended by striking out, in line 1, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXX**

SECTION 186. Section 1 of chapter 146 of the General Laws, as so appearing, is hereby amended by striking out, in lines 13, 14, 15, 16 and 18, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

**Department of Public Safety Name Change XXI**

SECTION 187. Section 6 of said chapter 146, as so appearing, is hereby amended by striking out, in line 8, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXII**

SECTION 188. Section 50 of said chapter 146, as so appearing, is hereby amended by striking out, in lines 65 and 66, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXIII**

SECTION 189. Section 50A of said chapter 146, as so appearing, is hereby amended by striking out, in line 53, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXXIV**

SECTION 190. Section 85A of said chapter 146, as so appearing, is hereby amended by striking out, in line 3, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXXV**

SECTION 191. Section 1 of chapter 147 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1 and 4, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

**Department of Public Safety Name Change XXXVI**

SECTION 192. Section 56 of said chapter 147, as so appearing, is hereby amended by striking out, in line 5, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXXVII**

SECTION 193. Section 116 of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words "public safety" and inserting in place thereof the following words:- inspection and regulation.

**Department of Public Safety Name Change XXXVIII**

SECTION 194. Section 129D of said chapter 149, as so appearing, is hereby amended by striking out, in lines 2 and 4, the words "public safety" and inserting in place thereof, in each instance, the following words:- inspection and regulation.

**Department of Workforce Development Correction IX**

SECTION 195. Section 1 of chapter 151A of the General Laws is hereby amended by striking out paragraph (e½), as appearing in section 580 of chapter 26 of the acts of 2003, and inserting in place thereof the following paragraph:-

(e½) "Commissioner", the director of workforce development pursuant to chapter 23H.

**Department of Workforce Development Correction X**

SECTION 196. Said section 1 of said chapter 151A is hereby further amended by striking out paragraph (g), as appearing in section 581 of said chapter 26, and inserting in place thereof the following paragraph:-

(g) "Department", the division of unemployment assistance within the department of workforce development.

**Department of Workforce Development Correction XI**

SECTION 197. Section 58 of said chapter 151A is hereby amended by striking out paragraph (g), as appearing in section 583 of said chapter 26, and inserting in place thereof the following paragraph:-

(g) Funds from this account shall be used to support the administration and operation of this chapter, and shall be used by the department of workforce development for the space, personnel and infrastructure required to maintain walk-in services, including the provision of general information, application assistance, claims information and orientation under this chapter.

**Department of Workforce Development Correction XII**

SECTION 198. Section 61 of said chapter 151A is hereby amended by striking out the second paragraph, as appearing in section 584 of said chapter 26, and inserting in place thereof the following paragraph:-

For the purpose of maintaining free employment offices, the commissioner may enter into an agreement with a city or town and, as part of any such agreement, the commissioner may accept monies, services or other quarters for the purposes of the employment service accounts.

### **Department of Workforce Development Correction XIII**

SECTION 199. Section 62A of said chapter 151A is hereby amended by striking out subsections (a) and (b), as most recently amended by section 586 of said chapter 26, and inserting in place thereof the following 2 subsections:-

(a) The division of unemployment assistance shall provide a minimum level of in-person assistance at the career centers serving the following areas: Worcester, Milford, Dudley, Springfield, Gardner, Greenfield, Pittsfield, North Adams, New Bedford, Northampton, Taunton, Brockton, Boston, Lawrence and Framingham.

(b) In addition to such access by telephone to offices of the division, the division shall maintain walk-in services, including the provision of general information, application assistance, claims information and orientation.

### **Transportation Reform XIX**

SECTION 200. Section 1 of chapter 161B, as so appearing, is hereby amended by inserting after the definition of "Authority" the following definition:- "Council", a council established in section 27.

### **Regional Transit Authority Council Transportation Reform XX**

SECTION 201. Said chapter 161B is hereby further amended by inserting the following new section:-

Section 27. There shall be a Regional Transit Authority Council for the purposes of coordination and sharing information and best practices in matters of security and public safety planning and preparedness, service delivery, cost savings, and administrative efficiencies. Members of the council shall include the administrator of each authority established under section 14. The secretary shall be chairman of the council and the general manager of the Massachusetts Bay Transportation Authority shall be a non-voting member of the council. The council shall meet no less than once each calendar quarter or upon the request, with reasonable notice, of the secretary.

### **Division of Insurance Duplicate License Fee**

SECTION 202. The first paragraph of section 14 of chapter 175 of the General Laws, as amended by section 444 of said chapter 26, is hereby further amended by adding the following clause:—

For each duplicate of a license issued under this chapter.

### **Early Intervention Insurance Cap**

SECTION 203. The third paragraph of section 47C of said chapter 175, as appearing in the 2002 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Reimbursement of costs for such services shall be part of a basic benefits package offered by the insurer or a third party, with a maximum benefit of \$5,200 per year per child and an aggregate benefit of \$15,600 over the total enrollment period.

### **Early Intervention Insurance Cap II**

SECTION 204. The third paragraph of section 8B of chapter 176A of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Reimbursement of costs for such services shall be part of a basic benefits package offered by the insurer or a third party, with a maximum benefit of \$5,200 per year per child and an aggregate benefit of \$15,600 over the total enrollment period.

### **Early Intervention Insurance Cap III**

SECTION 205. The third paragraph of section 4C of chapter 176B of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Reimbursement of costs for such services shall be part of a basic benefits package offered by the insurer or a third party, with a maximum benefit of \$5,200 per year per child and an aggregate benefit of \$15,600 over the total enrollment period.

#### **Early Intervention Insurance Cap IV**

SECTION 206. The second paragraph of section 4 of chapter 176G of the General Laws, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Reimbursement of costs for such services shall be part of a basic benefits package offered by the insurer or a third party, with a maximum benefit of \$5,200 per year per child and an aggregate benefit of \$15,600 over the total enrollment period.

#### **Confirmation of Indigency II**

SECTION 207. Section 2½ of chapter 211D of the General Laws, as added by section 452 of chapter 26 of the acts of 2003, is hereby repealed.

#### **Confirmation of Indigency III**

SECTION 208. Chapter 211D of the General Laws is hereby amended by striking out section 2A, as so appearing, and inserting in place thereof the following section:-

Section 2A. Notwithstanding any general or special law to the contrary, a criminal defendant charged with a misdemeanor or a violation of a municipal ordinance or by-law need not be appointed counsel if the judge, at arraignment, informs such defendant on the record that, if the defendant is convicted of such offense, his sentence shall not include a period of incarceration. For good cause, that judge or another judge of the same court may later revoke such determination on the record and appoint counsel and, upon request, such counsel shall be entitled to a continuance to conduct any necessary discovery and to adequately prepare for trial. Any such determination or revocation by a judge shall be endorsed upon the docket of the case.

It shall be the responsibility of the chief probation officer assigned to each court to ensure that a defendant claiming to be indigent meets the definition of indigency under section 2. A defendant seeking appointment of counsel shall be interviewed by the chief probation officer or his designee before the appointment of counsel. The person conducting the interview shall explain to the defendant the definition of indigency. The person conducting the interview shall prepare a written indigency intake report that shall record the results of the interview and his recommendation on whether or not the defendant is indigent. The defendant and the person conducting the interview shall sign the indigency intake report. In signing the report, the defendant shall certify under the pains and penalties of perjury that the information contained therein is true and that he has not concealed any information relevant to his financial status. All statements contained in the report shall be deemed material statements. The completed report shall be presented to a judge who may adopt or reject the recommendations in the report, either in whole or in part.

If the court finds that, in asserting indigency, a defendant has knowingly misrepresented or failed to disclose material information, the court shall immediately terminate any assignment or appointment of counsel made under this chapter. The court shall further assess the fair market value of the assigned or appointed counsel's services, as determined by the committee for public counsel services, plus a fine of \$100 against the defendant.

Not later than 60 days after the appointment of counsel, the chief probation officer assigned to the court or his designee shall complete a re-assessment of the defendant's financial circumstances to ensure that the defendant continues to meet the definition of indigency. In preparing his re-assessment, the chief probation officer or his designee may access wage and tax information in the possession of the department of revenue. The department of revenue shall provide such information to the chief probation officer or his designee upon request. A defendant claiming indigency shall execute a waiver authorizing the court's chief probation officer or his designee to obtain any information relevant to the verification of indigency from the department of transitional assistance, the department of medical assistance and the registry of motor vehicles. Those departments shall provide such information to the chief probation officer or his designee upon request.

Upon completion of his re-assessment, the chief probation officer shall prepare a written report of his findings. The chief probation officer shall sign the report, certifying that the defendant either continues to meet or

does not continue to meet the definition of indigency. The report shall be filed with the case papers and shall be presented to the judge presiding at the defendant's next court appearance. If, upon receipt of the report, a judge finds that the defendant no longer meets the definition of indigency, he shall revoke the appointment of counsel and allow the defendant a reasonable continuance to obtain new counsel.

Not later than 1 year after the appointment of counsel and annually thereafter, if the defendant continues to be represented by court-appointed counsel, the chief probation officer assigned to the court or his designee shall conduct a further re-assessment of the defendant's financial circumstances to ensure that he continues to meet the definition of indigency and shall prepare, sign and file a written report certifying that the defendant either continues to meet, or does not continue to meet, that definition of indigency.

If a criminal defendant is charged with a second or further offense while continuing to be represented by court-appointed counsel for a previously charged offense, the court in its discretion shall determine whether any further determination of indigency, other than the 60-day and annual re-assessments required by the defendant's representation for the first offense, need be undertaken.

A person provided counsel under this chapter shall be assessed a counsel fee of \$150, which the court may waive only upon determining that the defendant is unable to pay. If, upon reviewing the chief probation officer's report on the 60-day re-assessment of the defendant's indigency, the court concludes that the defendant is able to pay the \$150 counsel fee of which he obtained a waiver, the court shall invalidate the waiver and re-impose the \$150 counsel fee.

The court may authorize a defendant to perform community service in lieu of payment of the counsel fee. A defendant seeking to work off his counsel fee in community service shall perform 10 hours of community service for each \$100 he owes in legal counsel fees. Notwithstanding any general or special law, rule or regulation to the contrary, a criminal matter shall not be terminated and the defendant shall not be discharged if the defendant owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such criminal matter until the legal counsel fee is satisfied in accordance with this chapter.

The clerk of the court shall, within 60 days of appointment of counsel, report to the departments of transitional assistance, medical assistance and revenue and the registry of motor vehicles the amount of any legal counsel fee owed by the defendant under this chapter. The department of revenue shall intercept the fee from tax refunds due to persons who have not paid it. The departments of transitional assistance and medical assistance shall deduct the fee in weekly or monthly increments from the benefit payments of persons who have not paid it. The registrar of motor vehicles shall place a lien in the amount of any portion of the legal counsel fee owed by the defendant upon the title of any motor vehicle owned in whole or in part by him. The lien shall be released only upon notification from the clerk of the court that the fee has been collected or worked off in community service.

### **CPCS Reform - Use of Staff Counsel in Western Counties**

SECTION 209. Paragraph (a) of section 6 of said chapter 211D, as appearing in the 2002 Official Edition, is hereby amended by adding the following clause:-

(vi) notwithstanding any special or general law to the contrary, the division shall be assigned in any civil or criminal matter described in paragraph (b) where the chief counsel determines in writing that insufficient numbers of qualified attorneys are available for assignment by the private counsel division in courts located in Hampden, Hampshire, Franklin or Berkshire counties.

### **Prohibiting Payment for Dual Counsel in Child Welfare Cases**

SECTION 210. Said chapter 211D of the General Laws is hereby amended by inserting after section 6A the following section:-

Section 6B. Not more than 1 counsel assigned or appointed under section 5, 6 or 6A shall be paid for representation of a party in civil proceedings pending in any trial court under paragraph C of section 23, section 24 or 29B or sections 39E to 39I, inclusive, of chapter 119 or section 3 of chapter 210. The chief counsel of the committee for public counsel services may permit an exception to this provision in extraordinary circumstances, such as the pendency of separate actions in distant counties on behalf of a client.

### **Litigation Fee Repeal I**

SECTION 211. Section 2A of chapter 262 of the General Laws is hereby repealed.

## **Litigation Fee Repeal II**

SECTION 212. Section 4D of said chapter 262 is hereby repealed.

## **Pension Reform XXII**

SECTION 213. Section 25 of chapter 268A, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "him" line 28, the following words:-

, subject to the provisions of section 15 of chapter 32. The employer of any person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

## **Confirmation of Indigency IV**

SECTION 214. Chapter 276 of the General Laws is hereby amended by inserting after section 99D the following section:—

Section 99E. (a) The commissioner of probation shall enter into an interagency service agreement with the department of revenue to verify income data and other information relevant to the determination of indigency of recipients of counsel pursuant to section 2 of chapter 211D.

(b) The commissioner of probation shall enter into an interagency service agreement with the department of transitional assistance to verify income data and other information relevant to the determination of indigency of recipients of counsel pursuant to section 2 of chapter 211D.

(c) The commissioner of probation shall enter into an interagency service agreement with the department of medical assistance to verify income data and other information relevant to the determination of indigency of recipients of counsel pursuant to section 2 of chapter 211D.

(d) The commissioner of probation shall enter into an interagency service agreement with the registry of motor vehicles to verify the statements on motor vehicle ownership or nonownership by recipients of counsel pursuant to section 2 of chapter 211D.

## **Civil Infraction Modification**

SECTION 215. Section 70C of chapter 277 of the General Laws is hereby amended by striking out, in line 5, as appearing in the 2002 Official Edition, the words "22F, 23, 24, 24D, 24G, 24L, and" and inserting in place thereof the following words:- 22F, 24, 24D, 24G, 24L, and.

## **Bail Lien and Restitution Collection**

SECTION 216. The General Laws are hereby amended by inserting after chapter 280 the following chapter:--

### **CHAPTER 280A.**

Section 1. This chapter shall be known as the bail lien and restitution collection act. Where the provisions of this chapter relating to the return of bail posted by or on behalf of a defendant in a criminal matter conflict with the provisions relating to the return of bail in any other general or special law or rule or regulation, this chapter shall control.

Section 2. For the purposes of this chapter, the following terms shall have the following meanings:

"Bail discharge docket", the docket created in section 4.

"Bail lien", the lien created by section 3; provided, however, that such lien shall be created and perfected automatically and immediately upon imposition of a financial obligation on the defendant.

"Bail lien discharge order", the order proscribed in section 4.

"Clerk", a clerk or assistant clerk of the superior court department, the district court department, the Boston municipal court department, the juvenile court department or the housing court department.

"Financial obligation", any order by the court to pay any monies.

"Justice", a justice or associate justice of the trial court department.

"Office of the district attorney", the office of the district attorney having jurisdiction over the criminal matter, but if the prosecution has been brought by the attorney general, then the term "office of the district attorney"

shall mean the office of the attorney general. The district attorney or attorney general, as the case may be, may designate a person in his office to accept service provided for in section 4.

Section 3. When a court imposes on the defendant a financial obligation, the clerk of the court shall immediately place a bail lien in the amount of such obligation on any bail posted by or on behalf of the defendant. The clerk shall not thereafter return any bail to the defendant or the person who posted the bail on behalf of the defendant until: (i) the financial obligation has been fully satisfied; (ii) the matter has been terminated and the court has discharged the defendant; or (iii) a justice of the court, by a written order that complies with the form prescribed in section 4, directs the clerk to return the bail to the defendant or the person who posted bail on behalf of the defendant. Except by order of the court, a matter shall not be considered terminated until all financial obligations imposed on the defendant have been satisfied. Persons authorized to admit a defendant to bail shall inform the defendant or the person posting bail on behalf of the defendant in a writing, which the defendant or the person posting bail on behalf of the defendant shall read and sign, that, in the event the court imposes a financial obligation on the defendant, a bail lien shall be placed on any bail posted by the defendant or on behalf of the defendant.

Section 4. After a hearing as prescribed herein, a justice may order the clerk to discharge in whole or in part a bail lien. The clerk shall not discharge a bail lien unless he is presented with a written bail lien discharge order bearing the name and signature of the justice which conforms to the format prescribed in this section. In addition to the printed name and signature of the ordering justice, the bail lien discharge order shall contain the following information: (i) the name of the defendant; (ii) the case number; (iii) the amount of bail to be returned; (iv) the reasons supporting the order for return of bail; (v) an itemized list of the financial obligations previously imposed on the defendant; (vi) a copy of the motion for the bail lien discharge order; and (vii) a copy of the affidavit in support of the motion. If the justice approves the bail lien discharge order, the original order shall be placed in the case file. One copy of the order shall be placed in the bail discharge docket and shall be a public record. The bail discharge docket may be maintained in printed book form or by electronic means and may be made available for public inspection on the internet.

The clerk shall maintain a bail discharge docket. The clerk shall file in the docket a copy of every bail lien discharge order approved by a justice sitting in his court. There shall be a separate bail discharge docket for each calendar year. The clerk shall annually, not later than February 1, cause to be filed with the house and senate committees on ways and means and the joint committee on the judiciary the following information extracted from all bail lien discharge orders filed during the previous 12 months: (i) the name of the defendant; (ii) the amount of bail returned; and (iii) the name of the justice ordering the bail returned.

A defendant who posted bail, or the person who posted bail on behalf of the defendant may, by written motion, apply to the court for the issuance of a bail lien discharge order. The motion shall be accompanied by an affidavit stating the reasons why the court should approve the motion for a bail lien discharge order. The affidavit shall not be accepted for filing by the clerk unless it is signed under the pains and penalties of perjury by the moving party and the motion shall not be accepted for filing by the clerk unless accompanied by the required affidavit. The motion and accompanying affidavit shall be filed with the clerk and a copy served upon the office of the district attorney not less than 3 business days prior to any court hearing on the motion. If the motion involves a case where the court has ordered restitution to be paid to a victim of a crime, the motion and affidavit shall be filed with the clerk and a copy served upon the office of the district attorney not less than 30 business days before any court hearing on the motion. The clerk shall, in accordance with the aforementioned time standards, schedule a hearing on the motion on a date and time that is convenient for the moving party, the victim, if any, the office of the district attorney, and the court. In a case where a court has ordered restitution to be paid to a victim of a crime, the district attorney shall inform the victim of the motion as well as the date and time proposed for a court hearing on the motion. In such cases requiring restitution, the victim shall have standing to be heard in opposition to or support of the motion. Failure of the victim to appear in court shall not, without more, constitute grounds for approval of the motion. The incarceration of the defendant or the person who posted bail on behalf of the defendant shall not, without more, constitute grounds for approval of the motion. After the hearing, the justice shall have 7 business days to consider and take action on the motion.

Section 5. A justice shall not waive, vacate, remit or reduce the financial obligations of a defendant who is incarcerated solely because of the defendant's incarcerated status. The clerk shall note on the mittimus ordering the commitment of the defendant the financial obligations imposed on the defendant, if any. If the defendant is committed to a house of correction, the sheriff shall be responsible for collecting all financial obligations owed by the defendant while in his custody and may attach any monies deposited in or due to be deposited in the canteen fund or any other financial account maintained by the defendant or on behalf of the defendant. If the defendant is committed to a facility of the department of correction or a facility of the department of youth services, the commissioner of the department having custody of the defendant shall be responsible for collecting all financial



obligations owed by the defendant while in custody of the department and may attach any monies deposited in or due to be deposited in the canteen fund or any other financial account maintained by or on behalf of the defendant. Funds collected shall be remitted to the clerk of the court in which the defendant was sentenced. Funds remitted under this section shall be applied first toward any restitution owed by the defendant. After the order of restitution is satisfied, funds remitted under this section shall be deposited into the fund prescribed by the general or special law establishing the obligation. If no such fund is prescribed, the funds so collected shall be deposited in the General Fund.

Section 6. The clerk of each court shall maintain a separate interest bearing account for the receipt of bail and other monies received by the court. Interest accruing on account of funds deposited in the account shall be remitted to the state treasurer and deposited not less than once per month in the General Fund. Bail that has been ordered forfeited shall, not later than 30 days after the order of forfeiture, be remitted to the treasurer and deposited in the General Fund.

### **Municipal Finance Oversight Board VIII**

SECTION 217. Section 1 of chapter 74 of the acts of 1945, is hereby amended by striking out the first and second paragraphs and inserting in place thereof the following paragraph:-

For purposes of this act, the term “board” shall mean a board composed of the attorney general, the state treasurer, the state auditor and the director of accounts, or their designees.

### **Transportation Reform XXI**

SECTION 218. Section 2 of chapter 465 of the acts of 1956 is hereby amended by striking out the third paragraph and inserting, in place thereof, the following new sentence:-

One of the members shall be the secretary of the executive office of transportation, who shall serve as chairperson of the authority. The Authority shall annually elect one of its members as vice-chairman and shall also elect a secretary-treasurer who need not be a member of the authority.

### **Massachusetts Water Resource Authority Tort Liability**

SECTION 219. Section 6 of chapter 372 of the acts of 1984 is hereby amended by striking out paragraph (f) and inserting in its place the following paragraph:-

(f) to sue and be sued, to prosecute and defend actions relating to its properties and affairs, and to be liable in tort to the extent limited by section 2 of Chapter 258 of the General Laws, except that the Authority and its members, employees and agents shall be immune from tort liability for acts and omissions constituting (i) the exercise of a legislative or judicial function; (ii) the exercise of an administrative function involving the determination of fundamental governmental policy; or (iii) the exercise of a discretionary function or duty; provided, however, that property of the Authority, other than, in actions to enforce the payment of bonds, the revenues pledged to the payment of bonds, shall not be subject to attachment nor levied upon by execution, and, provided further, that the Authority is not authorized to become a debtor under the United States Bankruptcy Code;.

### **Massachusetts Water Resources Authority Bonds I**

SECTION 220. Paragraph (a) of section 12 of said chapter 372 is hereby amended by striking out the fifth sentence, as appearing in section 1 of chapter 83 of the acts of 2001, and inserting in place thereof the following sentence:-

The aggregate principal amount of all bonds issued under authority of this act shall not exceed \$5,800,000,000 outstanding at any one time; provided, however, that bonds for the payment of redemption of which, either at or prior to maturity, refunding bonds shall have been issued shall be excluded in the computation of outstanding bonds.

### **Massachusetts Water Resources Authority Bonds II**

SECTION 221. Section 16 of said chapter 372 is hereby amended by striking out the fourth sentence, as appearing in section 2 of said chapter 83, and inserting in place thereof the following sentence:-

The aggregate principal amount of all bonds issued under the authority of this act shall not exceed \$5,800,000,000 outstanding at any one time; provided, however, that bonds for the payment of redemption of which,

either at or prior to maturity, refunding bonds shall have been issued shall be excluded in the computation of outstanding bonds.

#### **Department of Transitional Assistance Work Requirement Change I**

SECTION 222. Subsection (j) of section 110 of chapter 5 of the acts of 1995 is hereby amended by striking out the first paragraph and inserting in place thereof the following three paragraphs:-

(j) The department shall administer a program, to be known as the work program, for families that are not exempt under section (e) but have received assistance for the program of transitional aid to families with dependent children for 60 days. The program shall require that the head of household in each such family, or both parents in a 2-parent family, shall participate in work-related activities for 20 hours each week if the youngest child of record is between the age of 2 and the age at which full time schooling is mandatory, for 24 hours each week if the youngest child of record is between the age at which full time schooling is mandatory and age 9, and for 30 hours each week if the youngest child of record is 9 years of age or older;

The requirement may be met by working in a job for which compensation is paid; by a parent or head of household who is in emergency shelter and complying with housing search requirements; by working full time in the full employment program established by subsection (l); by participating in community service pursuant to subsection (k); or by participating in education and training programs that meet the requirements of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or any successor thereto, including activities required by or necessary for the successful completion of any such education and training program. At the discretion of the commissioner, recipients subject to the work requirement who fail, without good cause, to meet the requirement shall not receive assistance.

To the extent permissible under federal law, the department shall determine that good cause exists when a recipient is not in compliance with the work program or the terms of an employment development plan, and that the noncompliance is due to lack of appropriate and available child care, lack of affordable and reliable transportation, housing search, lack of an available and appropriate community service site identified by the department, or illness or disability or other reasons established by the department. For purposes of this paragraph, a determination as to whether an available child care slot is appropriate shall take into consideration factors that the office of child care services recommends be considered or that a reasonable and responsible parent would consider in deciding whether a child care slot is appropriate, including the time required to travel to and from the provider and the recipient's home, work or other activities. Before determining that a recipient has failed to comply with the work program or the terms of an employment development plan without good cause, the department shall review all good cause criteria with the recipient to determine if good cause exists.

#### **Department of Transitional Assistance Work Requirement Change II**

SECTION 223. Subsection (j) of section 110 of chapter 5 of the acts of 1995, as most recently amended by section 528 of chapter 26 of the acts of 2003, is hereby further amended by striking out the word "twenty" wherever it appears in the second paragraph, and inserting in place thereof, in each instance, the following words:— the required.

#### **Natural Resource Damages Trust I**

SECTION 224. Section 177 of chapter 43 of the acts of 1997 is hereby repealed.

#### **Natural Resource Damages Trust II**

SECTION 225. Chapter 194 of the acts of 1998 is hereby amended by striking out section 317 and inserting in place thereof the following section:

Section 317. There shall be established and set up on the books of the commonwealth a separate trust to be known as the Natural Resource Damages Trust to be administered and expended by the executive office of environmental affairs. Expenditures may be made from the trust account, without further appropriation, for the purposes of funding natural resource restoration, replacement or acquisition of equivalent natural resources, the development of natural resource damages claims, including, but not limited to, investigation of such claims and enforcement of settlements. Expenditures may also be made from the trust account, without further appropriation, for the purposes of funding other actions related to natural resources damage including, but not limited to, natural

resource damage assessment, natural resource damage recovery, natural resource law enforcement and, if necessary, the costs of personnel and administration of studies or related activities, including grants to public and nonpublic entities, conducted pursuant to the secretary's authority as trustee for natural resources pursuant to section 5 of chapter 21E of the General Laws, sections 23 to 27, inclusive, of chapter 130 of the General Laws, section 42 of chapter 131 of the General Laws, section 9607(f) of Title 42 of the United States Code, section 1321 of Title 33 of the United States Code, section 2706 of Title 33 of the United States Code or any other relevant and appropriate authority. The trust shall retain all interest earned on sums deposited in the trust. The trust may receive funds as may be appropriated from time to time, as well as gifts and grants of money or other contributions from any source, either public or private, and settlements, judgments, or fines or penalties not designated by law for other specific purposes, to be expended within the purposes of the trust. The fund may not receive any fees that have been collected by an agency within the executive office of environmental affairs.

#### **Debt Defeasance Fund Repeal**

SECTION 226. Section 6 of chapter 55 of the acts of 1999 is hereby repealed. The comptroller shall transfer any remaining balance in the Debt Defeasance Fund to the General Fund not later than June 30, 2005.

#### **Prescription Advantage I**

SECTION 227. Sections 47 and 497 of chapter 159 of the acts of 2000 are hereby repealed.

#### **Restoring General Obligation Pledge to Regional Transit Authority Bonds**

SECTION 228. Sections 107 and 245 of chapter 184 of the acts of 2002 are hereby repealed.

#### **Attleboro Campus Improvements**

SECTION 229. Section 2 of chapter 245 of the acts of 2002 is hereby amended by inserting in item 7066-2010, in line 6, after the word "grounds", the following two clauses:—

; provided that notwithstanding any other provision of this act or of any general or special law to the contrary, the commissioner of capital asset management is hereby authorized to enter into a lease for all or any portion of the former Attleboro high school in the city of Attleboro on such terms as the commissioner and the president of Bristol community college for use by the college; and provided further, that notwithstanding any other provision of this act said commissioner is hereby authorized to expend any bond funds authorized by this act to make any improvements to said former Attleboro high school as may be deemed appropriate or necessary by said commissioner and said president for the use of said building by Bristol community college, including but not limited to improving handicapped accessibility at said building.

#### **Plymouth Land Conveyance**

SECTION 230. Chapter 259 of the Acts of 2002 is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. The conveyance of the easement authorized in section 1 shall be for nominal consideration of \$1.

#### **Identification Cards for Blind Individuals**

SECTION 231. Section 7 of chapter 26 of the Acts of 2003 is hereby repealed.

#### **Certificates of Blindness**

SECTION 232. Section 8 of chapter 26 of the Acts of 2003 is hereby repealed.

#### **Repeal of Asset Transfer Waiver Authority**

SECTION 233. Section 317 of chapter 26 of the Acts of 2003 is hereby repealed.

#### **Repeal of Expanded Estate Recovery I**

SECTION 234. Section 329 of chapter 26 of the Acts of 2003 is hereby repealed.

**Repeal of Expanded Estate Recovery II**

SECTION 235. Section 330 of chapter 26 of the Acts of 2003 is hereby repealed.

**Municipal Incentives for Smart Growth Zoning III**

SECTION 236. Section 548 of chapter 26 of the acts of 2003 is hereby amended by striking out subsection (n) and inserting in place thereof the following new subsection:-

(n) The commissioner shall deposit \$25,000,000 of the proceeds realized from property dispositions under this section into the General Fund. Any proceeds in excess of that amount that are not subject to deposit into the trust funds established in sections 35Y and 35Z of chapter 10, inserted by section 22 of this Act, shall be deposited into the Smart Growth Housing Trust Fund established in section 35BB of chapter 10.

**Department of Workforce Development Correction XIV**

SECTION 237. Section 591 of chapter 26 of the Acts of 2003 is hereby repealed.

**Repeal of Asset Transfer to PRIT Fund**

SECTION 238. Section 593 of chapter 26 of the Acts of 2003 is hereby repealed.

**Fringe Benefit Exemption for Retained Tuition**

SECTION 239. Section 633 of chapter 26 of the Acts of 2003 is hereby amended by striking the last sentence of the third paragraph.

**Fernald Advisory Council I**

SECTION 240. Section 678 of chapter 26 of the Acts of 2003 is hereby repealed.

**Repeal of Expanded Estate Recovery III**

SECTION 241. Section 703 of chapter 26 of the Acts of 2003, as amended by section 110 of chapter 140 of the Acts of 2003, is hereby repealed.

**Spousal Pension Benefit**

SECTION 242. Chapter 26 of the Acts of 2003, as most recently amended by Chapter 55 of the Acts of 2003, is hereby further amended by striking out section 713A and inserting in place thereof the following section:-

Section 713A. Section 175 of this act shall apply to those who become members in service on or after November 1, 2003.

**Residential Assistance for Families in Transition Pilot Program**

SECTION 243. There shall be a program to provide assistance for homeless families and families at risk of becoming homeless. The amount of financial assistance shall not exceed \$3,000 per family. Funds may be used for security deposits, first and last month's rent, moving expenses, utility payments or other uses as determined by the department of housing and community development. Assistance shall be administered by the department through contracts with regional nonprofit housing agencies. No such assistance shall be provided to any family with an income in excess of 130 per cent of the federal poverty level, except in cases of extraordinary hardship as determined by the department. Cases of extraordinary hardship shall not exceed 10 per cent of the program caseload. Before authorizing a residential assistance payment for a family, the nonprofit housing agency shall make an assessment of whether the payment, with or without additional housing stabilization support, will enable the family to retain its current housing, obtain new housing, or otherwise avoid homelessness. In making such an assessment

the agency shall apply a presumption that the payment will enable a family to retain its housing, obtain new housing, or otherwise avoid homelessness if the family is paying less than or equal to 50 per cent of its income for said housing. A family that is paying more than 50 per cent of its income for its housing shall be provided a fair opportunity to establish that a residential assistance payment will enable it to retain its housing, obtain new housing, or otherwise avoid homelessness. Residential assistance payments may be made through direct vendor payments according to standards to be established by the department. The agencies shall establish a system for referring families approved for residential assistance payments whom the agencies determine would benefit from such services to existing community-based programs that provide additional housing stabilization supports, including assistance in obtaining housing subsidies and locating alternative housing that is safe and affordable for the families. The program shall be administered pursuant to guidelines established by the department. The department shall provide a report to the secretary of administration and finance and the house and senate committee on ways and means no later than March 1, 2005, detailing all expenditures of the program, and including but not limited to the number of recipients of the funds, the housing status of the recipients, the purposes for which each family used the assistance, the administrative costs and any other related costs of the program.

### **Self-Sufficiency Standard**

SECTION 244. (a)(1) Not later than October 1, 2004, the Commonwealth Corporation, referred to in this section as the "Corporation," shall contract with a research unit or organization that has experience in studying what is necessary to attain self-sufficiency in the commonwealth for the purpose of developing a self-sufficiency standard for the commonwealth. As used in this section, the term "self-sufficiency standard" or "standard" shall mean the amount of income needed by a family or household in the commonwealth to provide for adequate housing, food, child care, health care, transportation and employment-related expenses, and to pay taxes.

(2) The standard shall be developed using methods and data sources similar to those used in the self-sufficiency standard for the commonwealth published in 2003 by Wider Opportunities for Women and the Women's Educational and Industrial Union. The standard shall be determined according to family size and age of children, and shall take into account regional variations in the costs of housing and child care, the differential inflation rates that affect the growth of these costs, and the effect of existing tax laws, including state sales tax, payroll taxes, federal and state income tax, child care tax credits and the earned income tax credit. In developing the standard, the research unit or organization shall rely, to the extent possible, on data reported by the United States Census Bureau, United States Department of Housing and Urban Development and on other data reported to state and federal agencies using standardized methodology and shall consult with commonwealth departments or agencies that serve low-income populations. Housing costs will be determined using fair market rents for apartments as reported by the United States Department of Housing and Urban Development. Child care costs will be determined using average costs for licensed child care facilities, including, but not limited to, family day care, as reported to the commonwealth's child care resource and referral agencies for children of different ages in different areas of the commonwealth.

(b) The president of the Corporation shall establish an advisory board to advise the Corporation on all matters relating to the development of a self-sufficiency standard and future revisions to it. The advisory board shall be composed of 18 members, each of whom shall serve a term of 2 years. The following shall be members of the board: the director of workforce development or a designee; the secretary of health and human services or a designee; the director of housing and community development or a designee; 1 member of the senate to be appointed by the senate president; 1 member of the senate to be appointed by the minority leader of the senate; 1 member of the house of representatives to be appointed by the speaker of the house of representatives; 1 member of the board of higher education or a designee; 1 faculty member of a Massachusetts university or college with research expertise in the areas of demographics, living costs and labor markets to be selected by the Corporation; and representatives of the following 9 organizations to be nominated by their respective organizations and selected by the Corporation: the Massachusetts Family Economic Self-Sufficiency Project; the Massachusetts AFL-CIO; the Associated Industries of Massachusetts; the Massachusetts Association of Community Colleges; the Massachusetts Taxpayers Foundation; the Massachusetts Workforce Boards Association; the Massachusetts Community Action Program Directors' Association; the Citizens' Housing and Planning Association; and the Massachusetts Association of Day Care Agencies. Members of the advisory board shall serve without compensation. The Corporation shall provide adequate staff to the advisory board so that it can perform its functions effectively.

(c)(1) Not later than March 31, 2005, the Corporation shall report the standard, including the methodology used to arrive at the standard and any legislative recommendations for making the standard effective, to the clerks of

the house of representatives and senate, the house and senate committees on ways and means and the joint committee on commerce and labor. The Corporation shall also make the report available to state executive offices and agencies, including, but not limited to, the executive office of health and human services, the department of workforce development, the department of transitional assistance, the department of public health, the department of social services, the Massachusetts rehabilitation commission, the department of housing and community development, the department of economic development, the Massachusetts office of business development, the office of child care services, the board of higher education, all workforce investment boards and One Stop Career Centers.

(2) The standard shall be made available to educational institutions, nonprofit organizations, and the general public upon request. The standard shall also be made available on any internet site established and maintained by the Corporation.

### **Centralized Public Housing Waiting List**

SECTION 245. The department of housing and community development, in coordination with the executive office of health and human services, shall implement a statewide application system for all state public housing and, to the extent possible, other affordable housing resources. The commonwealth shall not be liable for any costs related to developing or implementing this system. The system shall permit application in multiple housing authorities and for multiple affordable housing programs and resources through the submission of a single application form, while allowing each housing authority and management company to make its own eligibility and preference determinations to the extent permitted by law. The department shall: (a) develop goals for such an application system including, but not limited to, a system that is user friendly, cost-free to the user, accessible to persons with disabilities, accessible to non-English speakers, accessible to the general public, ensures protection of personal privacy, provides a single point of entry application process to as many affordable housing units in as many different types of programs and developments as possible, and provides a comprehensive, searchable database of affordable housing units; (b) develop specifications for a system meeting the goals described in this section; and (c) determine whether existing systems or technology meet the goals described in this section or whether new systems or technology need to be developed to meet these goals. The department shall file a report of its findings and recommendations, and its progress in implementing this system, with the house and senate committees on ways and means and the joint committee on housing and urban development not later than March 31, 2005. The department shall implement the statewide application system established by this section no later than December 31, 2005.

### **Community Policing Grants Reform**

SECTION 246. Notwithstanding any general or special law to the contrary, the executive office of public safety, in cooperation with the Massachusetts Chiefs of Police Association, shall submit a report to the house and senate committees on ways and means no later than October 1, 2004 that shall recommend a formula for the equitable distribution of community policing grants based upon, but not limited to, the following: accurate statistics for each municipality's population as of the 2000 United States census, historical levels of community policing grants, violent crime rates, seasonal population fluctuations, hate crimes statistics, non-violent crime rates, tourism and visitor statistics, risk of terrorist attack, and law enforcement officer assault statistics. The report shall also include detailed information regarding unexpended balances of the funds for each municipality and the reason for the unexpended balances. No competitive community policing grant funds shall be distributed in fiscal year 2006 prior to the enactment of legislation establishing a new distribution formula for the allocation of the community policing grants. Earmarked funds shall be reduced 33.3 per cent beginning in fiscal year 2006 and in each subsequent fiscal year with the intention of eliminating earmarked funds from community policing grants by fiscal year 2008.

### **Middlesex County Indigency Verification Pilot Program**

SECTION 247. Notwithstanding any general or special law to the contrary, there shall be a pilot program in the Cambridge division of the Middlesex county district court to improve indigency verification of defendants claiming a right to publicly funded counsel. The program's objective shall be to employ appropriate information technology to access, instantaneously, or as nearly instantaneously as possible, all information potentially relevant in verifying defendants' indigency that is available to the chief probation officer under sections 114, 207, 208, and 214

of this act. From September 1, 2004 until April 31, 2005, the committee for public counsel services shall enter into a service agreement with a consulting firm to investigate and examine the assets of defendants seeking publicly funded counsel based upon indigency. The consulting firm shall be selected through a competitive bidding process. The competitive bidding process shall require that all bidders be qualified and experienced in the use of information technology to achieve rapid and accurate retrieval of data comparable to the data needed for this program from systems comparable in size and scope to the systems being used as information resources in this program. The chief probation officer of the Cambridge division of the Middlesex county district court, in collaboration with the committee for public counsel services, shall oversee the operation of the pilot program. Through the use of appropriate information technology in, or immediately adjacent to the courtroom, the program shall attempt to provide the chief probation officer and presiding judge with immediate access to the relevant records of the departments of revenue, transitional assistance and medical assistance and the registry of motor vehicles to determine a defendant's eligibility for publicly funded counsel. The program shall seek to provide such information to the presiding judge during the same session of the court in which the defendant claims entitlement to such services. Consistent with applicable laws and to the extent feasible, the consultant shall, through the use of information technology, also seek to obtain access, as nearly instantaneously as possible, to the defendant's bank and financial records, property records and social security records, in order to determine the defendant's eligibility for publicly funded counsel.

The committee for public counsel services and the consultant shall submit a report to the joint committee on the judiciary and the house and senate committees on ways and means on or before May 31, 2005 detailing any cost savings to the commonwealth that resulted from the pilot program. In particular, the report shall compare the percentage of defendants granted public counsel in the Cambridge division of the Middlesex district court during the pilot program with the percentage of defendants granted public counsel in the same court during the same period in 2003. Further, the report shall compare the percentage of defendants in the Cambridge division of the Middlesex district court claiming a right to public counsel who were found eligible for such services during the pilot program with the percentage of defendants in the central division of the Boston municipal court claiming a right to public counsel who were found eligible for such services during the term of the pilot program. The report shall also include recommendations for any legislation that is deemed necessary to improve the speed and accuracy of indigency verification in the courts.

### **Internet Notice of Level 3 Sex Offenders**

SECTION 248. (a) The purpose and intent of this section is to enhance available notification procedures to warn members of the general public of the likelihood they will encounter a level 3 sex offender in the community by allowing police departments to post certain information about such offenders on the internet as part of level 3 community notification plans, which the general court hereby finds to serve a substantial public safety interest.

(b) Section 178K of chapter 6 of the General Laws is hereby amended by striking out the word "however", in line 152, as appearing in the 2002 Official Edition, and inserting in place thereof the following:- that such active dissemination may include publication of such information on the internet by the police department at such time and in such manner as the police or the board deems reasonably necessary; and provided further

### **Sex Offender Management Pilot Program**

SECTION 249. There shall be a pilot program operated by the Barnstable county sheriff to determine the effectiveness of proposed improvements to the regional uniform protocol for sex offender management. Any individual who has been adjudicated as a sex offender, is being released from a department of correction facility or a house of correction, and intends to reside in Barnstable county must register with the sex offender registry board 90 days before his release and declare the municipality in which he plans to reside. The department of correction facility or house of correction releasing such a sex offender shall require that he be transferred to the house of correction in Barnstable county 30 days before his release. One critical objective of the pilot program shall be to insure, through the expanded use of regional hearing officers, that all sex offenders being released into Barnstable county municipalities are registered and classified before they are released from custody. The sex offender registry board, in consultation with the Barnstable county sheriff, shall expand the use of regional hearing officers in Barnstable county to insure the registration and classification of sex offenders before their release from custody. In registering, sex offenders must disclose their primary and any secondary post-release addresses.

The pilot program shall operate until June 30, 2005.

### **OSD Procurement Reform**

SECTION 250. Notwithstanding any general or special law to the contrary, the division of operational services shall implement in fiscal year 2005 procurement reforms including, but not limited to the following: (a) a review of the procurement of goods and services to ensure all goods and services procured by the commonwealth or its political subdivisions shall be in the most efficient and cost effective manner possible; (b) deploy new strategies to increase vendor competition including, but not limited to, reverse auctions and multiple-round requests for proposals; (c) review key purchasing categories to provide immediate savings in, including but not limited to, information technology, office supplies, lighting, food and food service equipment, medical supplies, janitorial supplies, temporary staffing and building supplies; (d) review existing equipment maintenance programs and identify opportunities for savings in state warranty agreements on, including but not limited to, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware; (e) work with industry consultants and specialists to analyze contracts, benchmark value against other states and assist in vendor negotiations; provided, that the consultants and specialists shall only be paid from any actual savings discovered; (f) the division shall specifically look into the initial warranties offered with the purchase or lease of the above products, including exploring the option of combining contracts to best provide the commonwealth with equipment and warranties at reduced costs while still providing adequate warranty coverage; and (g) explore the possibility of bulk purchasing for standard equipment or services to increase purchasing power and achieve maximum savings. The division of operational services shall submit a report on the implementation of procurement reforms that shall include, but not be limited to, the following: (a) a summary of actions taken to-date on the above referenced reforms; (b) a review of instances where agencies expended funds on any product when the expenditures exceeded that of the published costs under any statewide procurement contract for fiscal years 2002 to 2004, inclusive, the reasons why these purchases were not made through the statewide contract, and any recommendations on how these purchases can be limited in the future; (c) a report on reverse auctions and multiple round requests for proposal, the frequency that these procurement bidding processes occur in relation to other bidding processes and the reasons why each bid process is chosen over another bid process; (d) where efficiencies can be made in providing statewide procurement contracts for any, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware electronic equipment leases, purchases and warranties; and (e) the division shall include in said report recommendations to require the trial courts, University of Massachusetts system, community colleges and state colleges to utilize the statewide contracts in the same manner of all other agencies. The division shall submit the report to the house and senate committees on ways and means not later than January 1, 2005.

### **Michael P. Lenihan Bridge**

SECTION 251. The bridge located on Route 3 north and extending over Route 62 in the town of Bedford, northbound bridge number B-04-011 (AYA) and southbound bridge number A-04-011 (AY9), shall be designated and known as the Michael P. Lenihan Bridge. The department of highways shall erect and maintain a suitable marker on said bridge bearing the designation in compliance with the standards of the department.

### **Tourism Formula**

SECTION 252. Notwithstanding any general or special law to the contrary, the provisions of section 615 of chapter 26 of the acts of 2003 shall apply in fiscal year 2005.

### **Edwin Poitras Room**

SECTION 253. Notwithstanding any general or special law to the contrary, Middlesex Community College shall name the first floor community meeting room located in the Federal Building on the Lowell campus in honor of Mr. Edwin Poitras, a distinguished World War II war hero and member of the Lowell community. The Middlesex Community College Board of Trustees shall promulgate policies and procedures governing the dedication or memorializing of any facility, building or room under the management and administration of Middlesex Community College.

### **Special Education Rate Freeze**



SECTION 254. Notwithstanding any general or special law to the contrary, the division of purchased services of the operational services division which, under section 274 of chapter 110 of the acts of 1993, is responsible for determining prices for programs under chapter 71B of the General Laws, shall set all such prices in fiscal year 2005 at the same level calculated for fiscal year 2004, except the prices for those programs for Extraordinary Relief, as defined in 808 CMR 1.06(4). Programs for which prices in fiscal year 2004 were lower than the full amount permitted by the division of purchased services shall be permitted to charge in fiscal year 2005 the full price calculated for fiscal year 2004.

In requests for tuition increases, except for those pursuant to extraordinary relief, the applicant shall notify relevant public schools and other public purchasers of the request prior to October 1 of the fiscal year in which the application is filed.

Upon the request of a program, the operational services division shall authorize a minimum price for the program to charge out-of-state purchasers. The price shall be determined in the following manner: the division shall identify the most recent price calculated for the program and apply the estimated rate of inflation which are established by December 1 of each year pursuant to section 274 of chapter 110 of the acts of 1993 in a compounded manner for each fiscal year following the most recent calculated price.

### **Early Education and Care Transitional Planning**

SECTION 255. (a) There shall be an advisory committee on early education and care consisting of no more than 15 members, who shall be appointed by the council on early education and care established pursuant to section 608 of chapter 26 of the acts of 2003. In making appointments to the committee, the council shall include at least 1 representative from each of the following: an early education and care program that serves state subsidized children; an early education and care programs that does not serve state subsidized children; a family child care provider or representative of a family child care system; head start; a child care resource and referral agency; a public school; a non-public school; a consumer of early childhood services; a kindergarten teacher; an early education and care teacher; and a pediatric health care provider. All members shall have expertise and demonstrated interest in early education and care services and a commitment to maximizing family choice by preserving a mixed system of high-quality public and private programs. In making their appointments, the council shall also ensure that members are broadly representative of the geographic, ethnic, racial and economic diversity of the commonwealth's young children. A chairman of the council shall be selected by a vote of the majority of its members. The committee shall make recommendations to the council by November 1, 2004 on those foundational and organization elements that will allow the state to build a first-rate early education and care system that provides every 3, 4, and 5 year old pre-school child with access to a high quality early education and care program that meets professionally accepted standards and is delivered by a well-trained early educator in a variety of public and private settings under chapter 15D of the General Laws, and in conjunction with special education services offered by the department of education and early intervention services offered by the department of public health, if applicable.

(b) The council on early education and care shall develop a transition plan for the consolidation, streamlining and coordination of publicly funded early education and care administration and functions within the department of early education and care including, but not limited to, program and services within the early learning services division of the department of education and the office for child care services, consistent with the purposes of chapter 15D of the General Laws, as inserted by section 35. The plan shall make recommendations on the operation of the department of early education and care and the duties of the commissioner of early education and care. The plan shall make recommendations for consolidating the functions of the office of child care services, the office of school readiness of the department of education, and the department of early education and care. The plan shall recommend procedures for establishing licensure and accreditation policies, eligibility criteria, sliding-fee scales, reimbursement rates, services, regulations, monitoring and policies among publicly funded early education and care programs. The plan shall make recommendations on how to assure the continued existence of Mass Family Networks under the new board. The plan shall identify the appropriate role of local Community Partnership Councils or other local councils. The council's plan, together with proposed legislative and administrative changes, shall be filed by December 31, 2004 with the clerks of the senate and house of representatives, the secretary for administration and finance, the house and senate committees on ways and means, and the joint committee on education, arts and humanities.

### **Universal Early Education Pilot Grants**

SECTION 256. (a) The office of child care services, in consultation with the council on early education and care established pursuant to section 608 of chapter 26 of the acts of 2003, shall issue a request for proposals for up to 8 grants with funding for up to 12 pilot communities to receive planning funding to develop a plan for universal voluntary, high-quality, publicly-funded early childhood education within a community or region. Upon recommendation by the council on early education and care, planning grants shall be funded from monies appropriated in item 7062-0000. Two or more communities may submit a joint proposal for a regional system of universal voluntary, high-quality, publicly-funded early childhood education. Any community or set of communities wishing to respond to the request for proposals shall form a single local school readiness board, hereinafter referred to as "local school readiness board," which shall be responsible for developing and submitting the plan. The plan shall include:

(1) An assessment of the current and future supply and demand of early education services within the community or communities for children ages birth to 5, and identification of eligible providers in the community or communities, provided that when identifying eligible programs, local school readiness boards shall maximize family choice by preserving a mixed system of high-quality public and private community-based programs;

(2) Strategies to help programs meet and implement early childhood program standards and guidelines for preschool learning experiences published by the department of education and to help staff to achieve degree requirements;

(3) Strategies to ensure a variety of program options that include part-time and full-time programming, provision of comprehensive services, inclusion of children with special needs and services that are culturally appropriate to meet the diverse needs of children and families;

(4) Strategies for coordinating state funding for early childhood education with federal local and private early education and care funding;

(5) Strategies for successful transitions for children to early education and care programs from early intervention, home or infant and toddler programs, and to kindergarten or first grade from home or early education and care programs;

(6) Strategies for child care resource and referral agencies to inform families about access to early education and care programs;

(7) Identification of the needs of stay-at-home parents who choose not to participate in an early childhood education programs; and

(8) A description of the resources necessary to meet the objectives outlined in the plan.

(b) Local school readiness board membership shall consist of no fewer than 7 and no more than 21 members and shall include at least 1 consumer of early childhood services, the superintendents of the local or regional school districts serving kindergarteners in the communities applying for the grant, the chief appointed or elected officials of the cities or towns and other members selected from the following categories: a representative from the regional office of the office of child care services, the early childhood coordinator for the local school district, a member of the chamber of commerce or a representative of a local business, a pediatric health care provider, a provider of early education and care services, a family child care provider, a Head Start provider, a provider of early intervention services, a provider of special education services, a provider of children's mental health services, a kindergarten teacher, a representative of a child care resource and referral agency, a representative of a public library, a representative of a non-public school, and other faith based or community representatives with an interest in or knowledge of the needs of young children and families. Local school readiness board membership shall be broadly representative of the racial, ethnic and economic diversity of the community. Existing local councils, including Community Partnerships for Children councils, may become the local school readiness board, provided that they meet all necessary qualifications. Local school readiness boards shall be subject to state laws and regulations concerning open meeting requirements, including but not limited to section 23B of chapter 39 of the General Laws, and members of the boards shall not participate in any matter before the board, which may directly affect their, or their immediate family's, personal or professional financial interests.

#### **Early Education and Care Board Members and Commissioner**

SECTION 257. (a) Notwithstanding any general or special law to the contrary, of the 5 initial board members appointed by the governor to the board of early education and care established in chapter 15D of the General Laws, as added by section 35, 1 shall be appointed for a 1 year term, 1 shall be appointed for a 2 year term, 1 shall be appointed for a 3 year term, 1 shall be appointed for a 4 year term, and 1 shall be appointed for a 5 year term.

(b) The board of early education and care shall appoint a commissioner by April 1, 2005.

## **Early Education and Care Workforce Plan**

SECTION 258. (a) The board of early education and care shall, within 18 months of the effective date of this act, develop an implementation plan for a workforce development system designed to support the education, training and compensation of the early education and care workforce, including all center, family child care, infant, toddler, preschool and school-age providers. In order to inform the plan, the board shall conduct:

(1) An inventory and assessment of the current resources and strategies available for workforce and professional development in the commonwealth, including but not limited to Head Start trainings, community-based trainings, higher education programs, child care resource and referral agency trainings, state and federally funded workforce development trainings/programs, public school system trainings/credentialing, and other trainings that address the needs of those who work with children and make recommendations for coordinating the use of those existing resources and strategies;

(2) Analyses using current data on the status of the early education and care workforce, including work experience, certifications, education, training opportunities, salaries, benefits and workplace standards; and

(3) an assessment of the workforce capacity necessary to meet the state's early education and care needs in the future.

(b) In the development of the plan, the board shall consider:

(1) Core competencies, a common and shared body of knowledge, for all those working in the early education and care fields;

(2) Streamlined and coordinated state certification, credentialing, and licensing within the early education and care fields including office of child care services teacher and provider certification and licensing, the child development associate, current public school teacher certification, and early education for all program standard director and teacher and provider credentialing requirements as they are phased in over time;

(3) A mandatory and regularly updated professional development and qualification registry;

(4) Agreements among higher education institutions for an articulated system of education, training, and professional development in early education and care;

(5) Approval of early education and care training programs and academic coursework, incentives for associates and bachelors programs to meet best practices and to modify curricula to reflect current child development research, and certification of trainers and teachers;

(6) Coordination of existing workforce resources among public agencies, including establishing regional workforce support resources in coordination with child care resource and referral agencies;

(7) A range of professional development and educational opportunities that provide appropriate coursework and degree pathways for family child care as well as center-based providers at all levels of the career ladder that are available in locations, days, and times that are accessible;

(8) Credit for prior learning experiences, development of equivalencies to 2 and 4 year degrees, and the inclusion of strategies for multiple pathways for entry into the field of early education and care;

(9) Recruitment and retention of individuals into the early education and care workforce who reflect the ethnic, racial, linguistic, and cultural diversity of Massachusetts families based on the current census data;

(10) Incentives and supports for early education and care professionals to seek additional training and education, such as scholarships, stipends, loan forgiveness connected to a term of service in the field, career counseling and mentoring, release time and substitutes;

(11) Guidelines for a career ladder or career lattice representing salaries and benefits that suitably compensate professionals for increases in educational attainment and with incentives for advancement, including a salary enhancement program;

(12) Public and private resources to support the workforce development system;

(13) A data collection and evaluation system to determine whether the workforce and professional development activities established pursuant to this chapter are achieving recruitment, retention and quality of the workforce goals; and

(14) Ways to recognize and honor advancements in educational attainment among early education and care professionals.

(c) The Board shall solicit input from organizations and agencies that represent a diverse spectrum of expertise, knowledge and understanding of broader workforce development issues and of the professional development needs of the early childhood and care workforce.

## **Education Reform Minimum Contribution Waiver**

SECTION 259. (a) Upon the request of the board of selectmen in a town, the city council in a plan E city or the mayor in any other city, the department of revenue may recalculate the minimum required local contribution, as defined in section 2 of chapter 70 of the General Laws, in the fiscal year ending June 30, 2005. Based on the criteria in this section, the department shall recalculate the minimum required local contribution for a municipality's local and regional schools and shall certify the amounts calculated to the department of education.

(b) A city or town that used qualifying revenue amounts in a fiscal year which shall not be available for use in the next fiscal year or that shall be required to use revenues for extraordinary non school-related expenses for which it did not have to use revenues in the preceding fiscal year or that has an excessive certified municipal revenue growth factor which is also greater than or equal to 2.5 times the state average municipal revenue growth factor may appeal to the department of revenue not later than October 1, 2004 for an adjustment of its minimum required local contribution and net school spending.

(c) If a claim is determined to be valid, the department of revenue may reduce proportionately the minimum required local contribution amount based on the amount of shortfall in revenue or based on the amount of increase in extraordinary expenditures in the current fiscal year, but no adjustment to the minimum required local contribution on account of an extraordinary expense in the budget for the fiscal year ending on June 30, 2005 shall affect the calculation of the minimum required local contribution in subsequent fiscal years. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of free cash, overlay surplus and other available funds.

(d) If, upon submission of adequate documentation, the department of revenue determines that the municipality's claim regarding an excessive municipal revenue growth factor is valid, the department shall recalculate the municipal revenue growth factor and the department of education shall use the revised growth factor to calculate the preliminary local contribution, the minimum required local contribution and any other factor that directly or indirectly uses the municipal revenue growth factor. Any relief granted as a result of an excessive municipal revenue growth factor shall be a permanent reduction in the minimum required local contribution.

(e) Upon the request of the board of selectmen in a town; the city council in a plan E city or the mayor in any other city; or in a majority of the member municipalities of a regional school district which used qualifying revenue amounts in a fiscal year that shall not be available for use in the next fiscal year shall appeal to the department of revenue not later than October 1, 2004 for an adjustment to its net school spending requirement. If the claim is determined to be valid, the department of revenue shall reduce the net school spending requirement based on the amount of the shortfall in revenue and reduce the minimum required local contribution of member municipalities accordingly. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of excess and deficiency, surplus and uncommitted reserves.

(f) If the regional school budget has already been adopted by two-thirds of the member municipalities then, upon a majority vote of the member municipalities, the regional school committee shall adjust the assessments of the member municipalities in accordance with the reduction in minimum required local contributions approved by the department of revenue or the department of education in accordance with this section.

(g) Notwithstanding clause (14) of section 3 of chapter 214 of the General Laws or any other general or special law to the contrary, the amounts so determined shall be deemed to be the minimum required local contribution described in chapter 70 of the General Laws. The house and senate committees on ways and means and the joint committee on education, arts and humanities shall be notified by the department of revenue and the department of education of the amount of any reduction in the minimum required local contribution amount.

(h) If a city or town has an approved budget that exceeds the recalculated minimum required local contribution and net school spending amounts for its local school system or its recalculated minimum required local contribution to its regional school districts as provided by this section, the local appropriating authority shall determine the extent to which the community shall avail itself of any relief authorized under this section.

(i) The amount of financial assistance due from the commonwealth in fiscal year 2005 under said chapter 70 or any other law shall not be changed on account of any redetermination of the minimum required local contribution under this section.

(j) The department of revenue and the department of education shall issue guidelines for their respective duties under this section.

#### **Plymouth Retirement Board**

SECTION 260. Notwithstanding any general or special law to the contrary, the Plymouth Retirement Board may, in accordance with guidelines established by the Public Employee Retirement Administration Commission, purchase the real property located at 89 Court Street, Plymouth, Massachusetts for the purpose of the use of the

property for the administrative office of the Plymouth Retirement Board, and may purchase or lease equipment and employ any such personnel necessary for the proper administration and transaction of business of the retirement system.

#### **Airport Savings and Improvement Initiatives Transportation Reform XXII**

SECTION 261. Notwithstanding any general or special law to the contrary, the executive office of transportation shall promote administrative saving and improvement initiatives between the Massachusetts Port Authority and the Massachusetts Aeronautics Commission. These initiatives shall seek to reduce duplication and enhance coordination regarding airport access, planning, economic development and security. The secretary of the executive office of transportation shall report to the house and senate committees on ways and means and the joint committee on transportation the results of these initiatives no later than March 1, 2005, which shall include a list of the administrative savings adopted and the projected amount of savings or other improvements from such initiatives.

#### **Roadway Savings and Improvement Initiatives Transportation Reform XXIII**

SECTION 262. Notwithstanding any general or special law to the contrary, the department of highways, and the department of conservation and recreation shall enter into an agreement concerning the construction, maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation; provided, however, that such roadways and boulevards shall remain under the control of the department of conservation and recreation. The executive office of transportation shall also examine and pursue appropriate actions for increasing federal aid for projects related to roadways and boulevards under the control of the department of conservation and recreation, in consultation with the department of conservation and recreation. The secretary of the executive office of transportation and the director of the department of conservation and recreation shall report to the house and senate committees on ways and means, the joint committee on natural resources and the joint committee on transportation no later than March 1, 2005, which shall include a 5 year plan related to the maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation and shall detail measures undertaken to preserve and protect the scenic and historic integrity of such roadways and boulevards.

#### **Transit Savings and Improvement Initiatives Transportation Reform XXIV**

SECTION 263. Notwithstanding any general or special law to the contrary, the executive office of transportation shall promote administrative saving and improvement initiatives among the Massachusetts Bay Transportation Authority and any regional transportation authorities established under chapter 161B. These initiatives shall seek to promote the sharing of resources as appropriate and to enhance statewide transit service, construction, repair, maintenance, capital improvement, security, coordination, financing and planning. The executive office of transportation shall study the issue of tort liability among the regional transportation authorities established under chapter 161B. The executive office of transportation shall also examine and pursue appropriate models for increasing federal aid for transit projects in the commonwealth. The secretary of the executive office of transportation shall report to the house and senate committees on ways and means and the joint committee on transportation the results of these initiatives no later than March 1, 2005, which shall include a list of the administrative savings adopted and the projected amount of savings or other improvements from such initiatives.

#### **Highway Savings and Improvement Initiatives Transportation Reform XXV**

SECTION 264. Notwithstanding any general or special law to the contrary and in order to achieve efficiencies and savings, the executive office of transportation, the Massachusetts Turnpike Authority and the department of highways shall identify instances in which the authority or the department can achieve costs savings and improved performance and service by eliminating or consolidating duplicative functions, sharing or coordinating resources, equipment, facilities, expertise, personnel and procurement. The Massachusetts highway department shall enter into an agreement or agreements with the authority in order to achieve efficiencies, realize

cost savings, eliminate duplication, and provide enhanced value to the commonwealth. The executive office of transportation shall submit a report to the joint committee on transportation and the house and senate committees on ways and means on or before March 1, 2005, detailing any and all cost savings to the commonwealth resulting from any agreements concluded pursuant to this section or estimated to result from any proposed agreement to share employees, equipment and operational activities and functions in order to achieve efficiencies, improved performance or services and cost savings, including recommendations to establish a permanent and potentially expanded process for the transfer or consolidation of certain responsibilities for interstate highway systems in the commonwealth from the highway department to the authority beginning December 31, 2005.

### **Transportation Reform XXVI**

SECTION 265. Notwithstanding any general or special law to the contrary, the terms “secretary of transportation and construction” or “executive office of transportation and construction”, wherever they appear in the General Laws, shall be deemed to mean “secretary of transportation” or “executive office of transportation”, respectively.

### **DCR Licensing of Restricted Vehicles III**

SECTION 266. Within 30 days of the effective date of this act, the division of urban parks and recreation shall notify any person who, prior to the effective date of this act, has been permitted by that division to operate a vehicle that is prohibited by section 35B of chapter 92 of the General Laws of the need to comply with said section 35B. Within 90 days of receiving a notice under this section, a person shall submit a permit application and may continue to operate his vehicle on the roads, driveways, parkways, boulevards and bridges while the decision on his permit application is pending.

### **Fernald Advisory Council II**

SECTION 267. There shall be a Fernald Developmental Center Land Reuse Committee to develop a comprehensive re-use consensus plan for Fernald Developmental Center State Property. The Re-use committee shall include the mayor of the city of Waltham, who shall serve as chair of said Re-use committee, the ward councilor from the city of Waltham representing the ward in which the campus is located, who shall serve as vice-chair of said Re-use committee, the planning director of the city of Waltham, the commissioner of the Massachusetts department of mental retardation or his designee, a mentally retarded consumer who is a resident of Fernald, and who shall be appointed by the commissioner of mental retardation, the commissioner of the division of capital asset management and maintenance or his designee, the chair of the commonwealth development coordinating council or his designee, 8 citizens of Waltham to be appointed by the mayor of the city of Waltham, of whom 4 shall be the citizens appointed to said Re-use committee during fiscal year 2004, the state representative from the ninth Middlesex house district, the state representative from the tenth Middlesex house district, and the senator from the third Middlesex senate district. The Re-use committee shall be responsible for representing the interests of the town in all negotiations with the division of capital asset maintenance and management and the department of mental retardation about the reuse and future development of the developmental center property. The Re-use committee shall, with the assistance of the division, develop a Comprehensive Re-use Consensus Plan for Fernald Developmental Center State Property, which shall provide a detailed description, by parcel, of how the property is to be developed upon closure of the Fernald campus. The plan shall include a description of any potential environmental degradation of the property, along with a proposal for environmental remediation, and a proposed cost for the cleanup, including, but not limited to, any building demolition required on the site. The goals of the plan may include, but shall not be limited to, preservation of open space, creation of affordable housing, development of new business, the creation of recreational opportunities, the development of new community residences for the mentally retarded consumers of Fernald Center, and any other applicable community priorities. The plan may also provide for parcels of land, and specific facilities, to remain under the control of the department of mental retardation. In its deliberations, the Re-use committee shall incorporate smart growth policies to the extent possible, and will be mindful of the rights of current Fernald residents, and their need for adequate and appropriate housing, clinical services, and appropriate staffing provided by the department of mental retardation. The Re-use committee will examine and consider models for the provision of these services on a section of the Fernald property. The process the Re-use committee shall follow will be determined by a majority vote of its members and shall include a public hearing at the beginning of the process to solicit comments, ideas and re-use proposals. The Re-use

committee shall develop a framework with guidelines and parameters as to the re-use of the property. The re-use concept shall be delivered to a sub group consisting of a representative of metropolitan planning organization, the department of capital assets and management, the commonwealth development coordinating council, the metropolitan area planning council and the city of Waltham Planning department to produce workable plans based on the re-use concept developed by the Re-use committee. The sub-group shall present re-use recommendation to the Re-use committee which shall invite the public to comment at a public hearing. The Re-use committee may amend and revise said plan in order to reach a consensus on one concept. Upon approval by the Re-use committee, the plan shall be presented to the Waltham city council for approval, and, if endorsed by majority vote of the council, filed with the division of capital asset management and maintenance. The plan shall also be submitted to the chairs of the house and senate committees on ways and means, and to the house and senate chairs of the joint committee on state administration, along with copies of authorizing legislation, if any, necessary to effectuate the reuse plan. If the reuse plan provides for the conveyance of land from the state to the city of Waltham, the legislation shall provide that the price paid for such parcel be for the full and fair market value of the property determined by independent appraisal, for the uses described in the plan, including, but not limited to, any restrictions or and requirements imposed by the plan. The legislation shall ensure that proceeds from any sale are first applied to repay the commonwealth for the cost of any bonds issued for environmental remediation, consulting services, or other closure costs. The legislation shall also provide that any remaining proceeds be provided to the department of mental retardation for capital improvements at Fernald, at other intermediate care facilities for the mentally retarded (ICF/MRs), or at community residential settings operated by the state. The Re-use committee shall meet as necessary to complete the reuse plan, as determined by a majority vote of the committee.

#### **Department of Environmental Protection Lease Flexibility**

SECTION 268. Notwithstanding chapter 7 of the General Laws or any other general or special law or regulation to the contrary, the division of capital asset management and maintenance may on behalf of the department of environmental protection renegotiate the department's facilities leases at One Winter Street, Boston and 627 Main Street, Worcester to obtain a reduced lease rate for those facilities for the remaining period of the existing leases, and to extend such leases for a period of up to 3 years beyond the 10 year limitation stipulated in said chapter 7.

#### **Lease Negotiations**

SECTION 269. Notwithstanding any general or special law to the contrary, the amount of \$216,000 shall be paid by the division of capital asset management and maintenance in fiscal year 2005 to cover property tax costs associated with the Suffolk county district attorney's office lease of 1 Bullfinch place in the city of Boston. The division shall continue to pay any amount necessary for the office of consumer affairs' lease at 10 Park Plaza in the city of Boston.

#### **EOHHS Core Functions**

SECTION 270. Notwithstanding any general or special law to the contrary, in order to improve administrative efficiency and preserve fiscal resources, the secretary of the executive office of health and human services may identify administrative activities and functions common to the separate agencies, departments, offices, divisions and commissions within the executive office and to designate such functions "Core Administrative Functions". Common functions that may be designated Core Administrative Functions include, without limitation, human resources, financial management, information technology and human services transportation. All employees performing functions so designated may be employed by the executive office, and the executive office shall charge the agencies, departments, offices, divisions and commissions for such services, subject to appropriation.

Upon the designation of a function as a Core Administrative Function, the employees of each agency, department, office or commission who perform such core administrative functions may be transferred to the executive office of health and human services. The reorganization shall not impair the civil service status of any such transferred employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Nothing in this section shall be construed to impair or change an employee's status, rights, or benefits under chapter 150E of the General Laws.

### **Medicaid Physician Rate Relief**

SECTION 271. Notwithstanding any special or general law to the contrary, the division of health care finance and policy shall set new rates effective July 1, 2004 for health care services provided to medical assistance recipients under the executive office's health care indemnity/third party liability plan and medical assistance recipients not otherwise covered under the executive office's managed care or senior care plans. In setting such rates the division shall increase rates of payment established pursuant to 114.3 CMR 16, 114.3 CMR 17.00 and 114.3 CMR 18.00 by not less than nine percent above the rates for such services in effect as of January 1, 2004 for practitioners licensed pursuant to section 2 of Chapter 112 of the general laws, provided further, that any and all appropriations set forth herein shall be in addition to appropriations authorized pursuant to item 4000-0700 of section 2.

### **Personal Care Attendant Changes**

SECTION 272. The executive office of health and human services shall consult and collaborate with personal care attendant program stakeholders in the development of any substantive change to the personal care attendant program. The executive office of health and human services shall regularly communicate on personal care attendant issues with the personal care attendant program stakeholders including through regular meetings.

### **Prescription Advantage II**

SECTION 273. A) Notwithstanding any special or general law to the contrary, the secretary of elder affairs shall not implement any cost sharing increases to Prescription Advantage in fiscal year 2005, and any and all prescription drug benefits provided to enrollees in fiscal year 2005 shall be the same as those provided to Prescription Advantage enrollees in fiscal year 2004; provided that there will be an open enrollment period, lasting not less than 1 month and not more than 2 months, that will begin no later than October 1, 2004; provided, that the open enrollment shall be preceded by at least 60 days of advance public notice and marketing. During the open enrollment period, individuals shall be enrolled in the program in the order in which the program receives their completed application. A person will also be eligible to enroll in the program at any time within a year of reaching age 65.

### **Prescription Advantage III**

SECTION 274. Notwithstanding any general or special law to the contrary, the secretary of elder affairs shall maximize federal revenues available through the implementation of a Medicare Endorsed Drug Discount Card Program for Prescription Advantage members and non-members whose income is at or below 135 per cent of the federal poverty level. The secretary of elder affairs shall encourage, but not require Prescription Advantage members to utilize the \$600 low-income transitional assistance benefit toward prescription drug purchases. The program shall not reduce a person's prescription drug benefit under Prescription Advantage and no individual shall be required to use the Medicare Discount Drug Card, or the \$600 in transitional benefit, if the individual's prescription drug benefits would otherwise be less under the Medicare Discount Drug Card, or if said Medicare Discount Drug Card does not provide an individual with access to a particular drug they might otherwise have access to under Prescription Advantage. The program shall be established not later than September 1, 2004, and the secretary shall submit a detailed plan to the committees on ways and means detailing implementation and progress of the program not later than August 31, 2004.

### **MassHealth – Utilization Control and Review**

SECTION 275. Notwithstanding any special or general law to the contrary, the secretary of health and human services may make expenditures from items 4000-0430, 4000-0500, 4000-0600, 4000-0620, 4000-0700, 4000-0860, 4000-0870, 4000-0875, 4000-0880, 4000-0890, 4000-0891, and 4000-1400 of section 2, for activities relating to disability determinations or utilization control and review, including, but not limited to, patient screenings and evaluations, regardless of whether such activities are performed by a state agency, contractor, agent or provider.

### **MassHealth Transferability**



SECTION 276. Notwithstanding any general or special law to the contrary, the secretary of health and human services may authorize transfers among items 4000-0430, 4000-0500, 4000-0700, 4000-0860, 4000-0870, and 4000-0880 of section 2; provided, that the amount transferred from these items shall not exceed 10 per cent of the appropriation in that item; provided, that the secretary shall notify the house and senate committees on ways and means at least 30 days prior to any transfer; provided, that this notification shall include any updated enrollment and utilization projections that document the necessity for said transfer; and provided further, that any such transfer shall take place no later than June 30, 2005.

#### **Requiring EOHHS to File Nursing Facility Waiver Application**

SECTION 277. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall, by September 24, 2004, apply to the federal Centers for Medicare and Medicaid Services for a waiver from the provisions of 42 U.S.C. § 1396b(w)(3)(B) for the nursing facility user fee created by section 25 of chapter 118 of the General Laws, to mitigate the impact of the user fee on nursing facilities that: (1) have 100 or fewer licensed beds; (2) were established and licensed in Massachusetts prior to the enactment of the Health Insurance for the Aged Act, Pub. L. 89-97, Title I, 79 Stat. 290, and the Medicaid Act, Pub. L. 89-97, Title I, § 121(a), 79 Stat. 343, on July 30, 1965; and (3) are not participating in either of the Medicare or Medicaid programs.

The form of such a waiver application shall meet the requirements for automatic approval by the federal Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. § 1396b(w)(3)(E), including (1) that the net impact of the nursing facility user fee with the waiver remains generally redistributive in nature, as provided in 42 C.F.R. § 433.68(e)(1)(ii), and (2) that the amount of the nursing facility user fee with the waiver remains not directly correlated to payments for items or services, and therefore meets the hold harmless requirements provided in 42 C.F.R. § 433.68(f).

In the waiver application, patient days from nursing facilities not described in the first paragraph above that must be exempted from the nursing facility user fee in order for the waiver application to meet the requirements for automatic approval by the Centers for Medicare and Medicaid Services shall be apportioned equally between nursing facilities in Essex, Middlesex, Norfolk, Plymouth, and Suffolk counties.

#### **Requiring EOHHS to Amend Nursing Facility Waiver Application**

SECTION 278. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall amend its April, 2004 application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver from the uniformity provisions of 42 U.S.C. § 1396(w)(b) to mitigate the impact of the user fee on nonprofit continuing care retirement communities and nonprofit residential care facilities. The amended waiver application shall be submitted to CMS within 45 days of the effective date of this section in a manner that is automatically approvable by the federal Centers for Medicare and Medicaid Services pursuant to 42 CFR 433.68(2)(ii). In addition to nonprofit continuing care retirement communities and nonprofit residential care facilities, the division shall include in its amended waiver application, as facilities with non-uniform rates, non-profit facilities with the highest number of Medicaid days in order for the application to meet the generally redistributive test in 42 CFR 433.68(2)(ii).

#### **Home and Community Based Waiver Expansion**

SECTION 279. Notwithstanding any general or special law to the contrary, the executive office of elder affairs, in collaboration with the executive office of health and human services, shall by August 31, 2004 apply for an expansion of the section 2176 home and community based waiver. This application shall seek to increase the income eligibility of the section 2176 waiver to up to 300 per cent of the federal benefit rate under the supplemental security income program. This expansion shall seek to maximize federal financial participation for expenditures authorized in item 9110-1500. Benefits under the section 2176 waiver shall be available to individuals up to the maximum income level provided in the approved waiver; provided, that the asset test in the waiver program shall be not less than \$20,000. The executive office of elder affairs shall first enroll members currently receiving benefits through the enhanced community options program into placements made available as a result of the expanded waiver and shall include in said waiver request the feasibility of offering members under the waiver a choice of receiving benefits in their home, community based setting or nursing home, whichever is the least restrictive. Said waiver expansion shall be at no net cost the state. The executive office of elder affairs shall submit a report to the house and senate committees on ways and means and the secretary of administration and finance by March 1, 2005

on this expansion. The report shall detail, at a minimum, the progress of the waiver application, and if applicable, the number of individuals enrolled under this waiver for each month since the waiver was obtained, the number of individuals remaining in the enhanced community options program, and the amount of federal financial participation received or anticipated to be received as a result of approval of the waiver.

### **Nursing Home Clinical Eligibility**

SECTION 280. Notwithstanding any general or special law to the contrary, the regulations, criteria and standards for determining admission to and continued stay in a nursing home shall not be more restrictive than those regulations, criteria and standards in effect on January 1, 2004.

### **Nursing Facility Assessment Spending**

SECTION 281. (a) Notwithstanding any general or special law to the contrary, in fiscal year 2005, the division of health care finance and policy, herein after referred to as the division, shall establish nursing facility Medicaid rates, payable out of the Health Care Quality Improvement Trust Fund, established under section 2EEE of chapter 29 of the General Laws, effective July 1, 2004 through June 30, 2005 that cumulatively total \$288,500,000 more than the annual payment rates established by the division under the rates in effect as of June 30, 2002, as mandated under section 1 of chapter 42 of the acts of 2003. The division shall adjust per diem rates to reflect any reductions in medicaid utilization. Payments from the fund shall be allocated in the following manner in fiscal year 2005:

(1) effective July 1, 2004, an annual amount of \$99,000,000 in the aggregate to fund the use of 2000 base year cost information for rate determination purposes; provided, that \$9,000,000 of said amount shall be expended for purposes of reimbursing nursing facilities for up to ten bed hold days for patients of the facility on medical and non-medical leaves of absence;

(2) effective July 1, 2004, an annual amount of \$122,500,000 for enhanced payment rates to nursing homes;

(3) effective July 1, 2004, an annual amount of \$50,000,000 to fund a rate add-on for wages, hours and benefits and related employee costs of direct care staff of nursing homes. As a condition for such rate add-on, the division of health care finance and policy shall require that each nursing home document to the division that such funds are spent only on direct care staff by increasing the wages, hours and benefits of direct care staff, increasing the facility's staff-to-patient ratio, or by demonstrably improving the facility's recruitment and retention of nursing staff to provide quality care, which shall include expenditure of funds for nursing facilities which document actual nursing spending that is higher than the median nursing cost per management minute in the base year used to calculate Medicaid nursing facility rates. A facility's direct care staff shall include any and all nursing personnel including registered nurses, licensed practical nurses, and certified nurses' aides hired by the facility from any temporary nursing agency or nursing pool registered with the department of public health. The division shall credit wage increases that are over and above any previously collectively bargained for wage increases. In monitoring compliance for this rate add on, the division's regulations shall adjust any spending compliance test to reflect any Medicaid nursing facility payment reductions, including, but not limited to, rate reductions imposed on or after October 1, 2002. The expenditure of these funds shall be subject to audit by the division in consultation with the department of public health and the division of medical assistance. In implementing this section, the division shall consult with the Nursing Home Advisory Council;

(4) effective July 1, 2004, an annual amount of \$17,000,000 to fund rate adjustments for reasonable capital expenditures by nursing homes, giving priority to nursing homes located or constructed in under-bedded areas as determined by the division of medical assistance, in consultation with the division of health care finance and policy, that meet quality standards established by the division of medical assistance in conjunction with the department of public health and the division of health care finance and policy for the purposes of encouraging the upgrading and maintenance of quality of care in nursing homes, and to fund rate adjustments to eligible nursing homes that meet utilization standards established by the division of medical assistance in consultation with the division of health care finance and policy for the purpose of reducing unnecessary nursing home admissions and facilitating the return of nursing home residents to non-institutional settings;

(5) \$300,000 for the purposes of an audit of funds distributed pursuant to clause (3). The division of health care finance and policy, in consultation with the department of public health and with the assistance of the division of medical assistance, shall establish penalties sufficient to deter noncompliance to be imposed against any facility that expends any or all monies in violation of clause (3), including but not limited to recoupment, assessment of fines or interest. The division shall report to the house and senate committees on ways and means not later than

October 1, 2005 a preliminary analysis of funds expended pursuant to said subsection in fiscal year 2005 and a description and timeline for auditing of these funds;

(6) \$250,000 to fund expenses at the division of health care finance and policy related to the implementation and administration of section 25 of chapter 118G of the General Laws; and

(7) an amount sufficient to implement the provisions of section 622 of chapter 151 of the acts of 1996; The comptroller shall transfer from the Health Care Security Trust Fund to the Health Care Quality Improvement Trust Fund on the first business day of each quarter, the amount indicated by the divisions of health care finance and policy and medical assistance to provide the appropriate rate increases to nursing homes.

### **ICF/MR Assessment III**

SECTION 282. Notwithstanding any general or special law to the contrary, in fiscal year 2005, the comptroller shall transfer from the Uncompensated Care Trust Fund account established pursuant to section 18(p) of chapter 118G of the General Laws, an amount sufficient to reflect the costs of the assessment on public facilities and an amount sufficient to fund rate increases for services provided to MassHealth members by non-public intermediate care facilities and community based residences. The comptroller shall transfer the federal financial participation received as a result of expenditures funded by the assessments to an account established for the department of mental retardation to administer for the purposes described above. The assessments and federal financial participation collected pursuant to section 27 of chapter 118G of the General Laws shall be expended to fund payments for services provided to MassHealth members by intermediate care facilities for the mentally retarded and community based residences. The assessments shall not be collected, and the expenditures required by this act shall not be authorized until the department of mental retardation and division of medical assistance certify the receipt of federal approval of any home and community based waiver amendments and related Title XIX state plan amendments, if required.

### **Disproportionate Share Hospitals FFP for DMH/DPH Facilities**

SECTION 283. Notwithstanding any general or special law to the contrary, the department of mental health, the department of public health, the division of medical assistance and the division of health care finance and policy shall take any appropriate action to obtain the maximum amount of federal financial participation available for amounts paid for low-income care costs at those mental health and public health facilities determined to be disproportionate share hospitals in accordance with requirements of Title XIX of the Social Security Act. Such appropriate action may include, but shall not be limited to, the establishment of a separate account within the Uncompensated Care Trust Fund, established by section 18 of chapter 118G of the General Laws, for the purpose of making disproportionate share payment adjustments to such qualifying mental health and public health facilities under relevant division of health care finance and policy regulations and the Title XIX state plan on file with the centers for Medicare and Medicaid services. The division of medical assistance, the department of public health and the department of mental health may expend amounts transferred to them from such separate account within the Uncompensated Care Trust Fund without further appropriation. Any federal funds obtained as a result of actions taken pursuant to this section shall be deposited in the General Fund. The state treasurer and the comptroller shall establish such procedures as may be necessary to effectuate this section, including procedures for the proper accounting and expenditure of funds under this section.

### **Intergovernmental Transfer – Acute Care Hospitals**

SECTION 284. Notwithstanding any general or special law to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$172,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to certain acute care hospitals. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the commonwealth's Title XIX state plan and the terms and conditions of agreements reached with the division for such payments. No such funds shall be expended unless the acute care hospital has executed the division of medical assistance's current Acute Hospital Request for Applications and Contract and unless a public entity is legally obligated to make an intergovernmental funds transfer in an amount specified in an agreement with such entity, which amount shall be not less than 50 per cent of the Title XIX payment. All revenues generated pursuant to this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with subsection (o) of

section 18 of chapter 118G of the General Laws. An accounting of such payments shall be reported quarterly to secretary of administration and finance and the house and senate committees on ways and means.

### **Medicaid and Community Colleges**

SECTION 285. Notwithstanding any general or special law to the contrary, each state and community college shall require that all students enrolled in 9 or more credits submit written documentation evidence of adequate medical insurance coverage. A list of the names, addresses, and social security numbers of all students indicating any form of MassHealth insurance coverage shall be forwarded to the Division of Medical Assistance for evaluation of alternative insurance options. The list shall be subject to privacy standards pursuant to Public Law 104-191, and the Health Insurance Portability and Accountability Act of 1996.

The division may assist in the purchase of group health insurance, including insurance offered through a college or university, on behalf of an eligible MassHealth member, provided that the division has determined that the purchase of such insurance is cost-effective and will be provided at no cost to the commonwealth. The division shall deny liability to any adult who refuses to enroll in other available insurance.

### **Initial Gross Payment to Qualifying Acute Care Hospitals**

SECTION 286. Notwithstanding any general or special law to the contrary, the comptroller shall transfer on or before June 30, 2005, without further appropriation, \$30,000,000 from the General Fund to the Uncompensated Care Trust Fund, established pursuant to section 18 of chapter 118G of the General Laws, for the purpose of making initial gross payments to qualifying acute care hospitals for the hospital fiscal year beginning October 1, 2004. The payments shall be made to hospitals prior to, and in anticipation of, the payment by hospitals of their gross liability to the fund. The comptroller shall transfer from the Uncompensated Care Trust fund to the General Fund not later than June 30, 2005, the amount of the transfer authorized in this section and any allocation thereof as certified by the commissioner of health care finance and policy.

### **Medicaid – Maximization of Third Party and Federal Revenue**

SECTION 287. Notwithstanding any general or special law to the contrary, state agencies and direct and subcontracted providers of health-related services, including purchase-of-service providers, financed from appropriation items for any state agency, shall maximize Title XIX and all other federal, state and private health insurance coverage available to offset costs to the commonwealth. The agencies or providers shall collect information from clients, or from the parent or guardian of a minor receiving services, necessary to determine the extent to which clients may be eligible for medical assistance benefits under chapter 118E of the General Laws or are beneficiaries of any health insurance policy. The agency or provider shall forward client information collected under this section to the division of medical assistance and such data shall only be used to match against available databases for the purpose of identifying all sources of potential payment for health services or health insurance coverage. As required or permitted by federal law, the division shall return the results of any such data matches to the originating agency, which shall take the appropriate action to ensure that costs to the commonwealth are minimized. Such actions shall include, but not be limited to, the agency or provider billing or re-billing all verified third-party sources. The executive office of administration and finance may grant an agency or provider an exemption from this section for good cause. The executive office of health and human services and the operational services division within the executive office of administration and finance shall review regulations, contracting forms, service delivery reports and uniform financial reporting requirements to determine what changes are necessary for the successful implementation of this section.

### **Uncompensated Care Trust Fund Federal Reimbursement**

SECTION 288. Notwithstanding any general or special law to the contrary, the division of medical assistance, hereafter referred to as the division, and the division of health care finance and policy shall take any appropriate action to obtain the maximum amount of federal financial participation available for amounts paid to hospitals, determined by the division to be disproportionate share hospitals in accordance with Title XIX requirements, for free care costs of such hospitals. Such appropriate action may include, but shall not be limited to, the assessment on hospitals for their liability to the uncompensated care pool pursuant to chapter 118G of the General Laws. Such appropriate action shall include the establishment or renewal of an interdepartmental services

agreement between the division and the division of health care finance and policy which may authorize the division to make deposits into and payments from an account established for the purposes of this section within the Uncompensated Care Trust Fund, established by section 18 of said chapter 118G of the General Laws, or authorize the division of health care finance and policy to transfer uncompensated care fee revenue collected from hospitals pursuant to said chapter 118G of the General Laws or funds otherwise made available to said trust fund by the general court, to the division for the purposes of making disproportionate share adjustment payments to hospitals qualifying for such payments in accordance with the commonwealth's Title XIX state plan and relevant provisions of Title XIX. The division may expend amounts transferred to it from the Uncompensated Care Trust Fund by the division of health care finance and policy under such interdepartmental services agreement without further appropriation. In no event shall the amount of money assessed upon each hospital exceed the hospital's gross liability to the Uncompensated Care Trust Fund as determined by the division of health care finance and policy pursuant to said section 18 of said chapter 118G of the General Laws. Any federal funds obtained as a result of said actions shall be deposited in the General Fund. The offices of the state treasurer and the comptroller shall establish such procedures as may be necessary to effectuate this section, including procedures to facilitate the expeditious assessment, collection and expenditure of funds pursuant to this section.

#### **Intergovernmental Transfer – UMass Memorial and Affiliated Hospitals**

SECTION 289. Notwithstanding any general or special law to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$125,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to the University of Massachusetts Memorial Hospital and its affiliated hospitals. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the commonwealth's Title XIX state plan, and the terms and conditions of agreements reached with said division for such payments. No such funds shall be expended unless the University of Massachusetts Memorial Hospital and its affiliated hospitals have executed the division of medical assistance's current Acute Hospital Request for Applications and Contract, and the University of Massachusetts Medical School makes an intergovernmental funds transfer in an amount specified in an agreement, which amount shall be not less than 50 per cent of the Title XIX payment. All revenues generated pursuant to this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of subsection (o) of section 18 of chapter 118G of the General Laws. Not later than 60 days after such expenditure, the University of Massachusetts Medical School shall submit to the secretary of administration and finance and the house and senate committees on ways and means a report detailing the programs funded from revenue associated with this section.

#### **Intergovernmental Transfer – Public Nursing Facilities**

SECTION 290. Notwithstanding any general or special law to the contrary, the division of medical assistance may expend an amount not to exceed \$16,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to certain publicly-owned or publicly-operated providers. The division of medical assistance shall make all reasonable efforts to process any application by a public authority, as defined for purposes of subsection N, as appearing on page 12 of attachment 4.19-D(4) of the commonwealth's Title XIX state plan, for approval as a qualifying nursing facility under that plan so that the applying public authority may qualify for the Title XIX payments herein provided during the current fiscal year. The division of medical assistance shall report by October 1, 2004 to the house and senate committees on ways and means concerning applications received from said public authorities, actions that the division has taken to process such applications and timetables for when such actions may receive approval. The payments shall be established in accordance with Title XIX of the Social Security Act or any successor federal statute, any regulations promulgated thereunder, the commonwealth's Title XIX state plan and the terms and conditions of agreements reached with the division for such payments. No funds shall be expended unless a public entity is legally obligated to make an intergovernmental funds transfer in an amount specified in an agreement with such entity, which amount shall not be less than 50 per cent of the Title XIX payment. All revenues generated pursuant to this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with subsection (o) of section 18 of chapter 118G of the General Laws.

#### **Intergovernmental Transfer – MassHealth Managed Care Contracts**

SECTION 291. Notwithstanding any general or special law to the contrary, during fiscal year 2005 and including the accounts payable period for that fiscal year, the division of medical assistance may expend from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund, not less than \$700,000,000 for a program of MassHealth supplemental payments to certain publicly operated entities providing Title XIX reimbursable services, directly or through contracts with hospitals under an agreement with the division relating to such payments and transfers as established in accordance with Title XIX of the Social Security Act or federal waivers thereof, federal regulations promulgated thereunder, the terms of the waiver under section 1115 of the Social Security Act, state law, and the Medicaid state plan; provided, that the growth in membership of said publicly operated entities' managed care organizations shall increase by not less than 48 per cent in fiscal year 2005. The funds may be expended only for payment obligations arising during fiscal year 2005. Such expenditures shall reduce payments from the Uncompensated Care Trust Fund to such entities by an amount comparable to the net revenues received by such entities under this section. The division of medical assistance shall notify the house and senate committees on ways and means if such expenditures are rendered ineligible for federal reimbursement. Amounts so authorized for the expenditure shall be funded in part through intergovernmental transfers to the commonwealth of municipal or other non-federal public funds. The Boston public health commission and the Cambridge public health commission shall transfer to the medical assistance intergovernmental transfer account an amount equal to 58 per cent of the gross amounts of supplemental payments made by the division of medical assistance under managed care contracts with the commissions. An amount equal to 8.6 per cent of the total amount that the Boston and Cambridge public health commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from the medical assistance intergovernmental transfer account to revenues available for the administration of the uncompensated care pool, as established under subsection (d) of section 18 of chapter 118G of the General Laws. An amount equal to 5 per cent of the total amount that the Boston and Cambridge public health commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from the medical assistance intergovernmental transfer account and credited to the Essential Community Provider Expendable Trust Fund, as established by section 133 of chapter 140 of the acts of 2003 and as amended by chapter 40 of the acts of 2004.

#### **MassHealth Essential – Hospital FY2005 Expenditure Authorization**

SECTION 292. Notwithstanding any general or special law to the contrary, the Title XIX single state agency shall administer a program of preventive and primary care for chronically unemployed persons who are not receiving unemployment insurance benefits and who are not eligible for medical assistance but who are determined by the division to be long-term unemployed, provided that such persons meet the eligibility requirements established under the MassHealth program as established in section 9A of chapter 118E of the General Laws; provided that such persons' financial eligibility shall not exceed 100 per cent of the federal poverty level. Such eligibility requirements shall not exclude from eligibility persons who are employed intermittently or on a non-regular basis. The provision of care to such persons under this program may, taking into account capacity, continuity of care and geographic considerations, be restricted to certain providers including community health centers, hospital-licensed health centers, mental health providers, and, where necessary to ensure access, larger primary group practice settings. Funding for the program may not exceed \$160,000,000 in hospital fiscal year 2005. Enrollment in the program shall not exceed 36,000 persons. If the agency projects that there is adequate funding to increase the enrollment cap, said agency must also certify that said increased enrollment shall not cause the program to annualize beyond the amount appropriated in fiscal year 2005. Sixty days prior to enrolling any person beyond the 36,000 cap, the agency shall notify and receive approval for such an increase from the house and senate committees on ways and means. The agency may operate the program until September 30, 2005. Implementation of the program shall be contingent upon the agency obtaining any requisite federal approval. The agency shall collect information on each person enrolled in the program and shall report quarterly to the house and senate committees on ways and means the following: (1) the number of persons enrolled; (2) the geographic distribution of said persons; (3) the location of service of each billable claim delineated by enrollee; (4) the type of services provided to enrollees; (5) enrollment patterns delineated by enrollee, including but not limited to, coverage start date, coverage end date, any transfer of coverage from the MassHealth Essential program to other MassHealth programs, other state funded programs, or federally funded programs; and (6) data collected on utilization on emergency room visits as compared to visits to community health centers and other lower-cost sites of care. The agency shall account for all spending on the program on the Massachusetts management accounting reporting system.

### **MassHealth Essential Surplus Transfer to the Uncompensated Care Pool**

SECTION 293. Notwithstanding any general or special law to the contrary, the comptroller, in consultation with the division of health care finance and policy and the secretary of health and human services, shall transfer \$50,000,000 in unexpended amounts from account number 4000-0896 in MMARS, so-called, to the Uncompensated Care Trust Fund established pursuant to section 18 of chapter 118G of the General Laws, on or before October 1, 2004. The division of health care finance and policy, shall expend the aforementioned amount, without further appropriation, to reimburse acute hospitals for uncompensated care rendered during hospital fiscal year 2005.

### **Transfer to the Uncompensated Care Pool**

SECTION 294. Notwithstanding any general or special law to the contrary, the comptroller shall transfer, on October 1, 2004, \$100,000,000 from the General Fund to the Uncompensated Care Trust Fund for the purpose of funding one-time payments to acute care hospitals and community health centers.

### **Essential Community Provider Expendable Trust Fund**

SECTION 295. Notwithstanding any general or special laws to the contrary, in fiscal year 2005, expenditures from the Essential Community Provider Expendable Trust Fund as established by section 133 of chapter 140 of the acts of 2003 and as amended by chapter 40 of the acts of 2004, shall be dedicated to efforts that are designed to improve and enhance the ability of the essential community providers to serve populations in need more efficiently and effectively, including, but not limited to, the ability to provide community-based care, clinical support and care coordination services, pharmacy management services, or other efforts to create effective coordination between hospital care and ambulatory care sites in the community. The secretary of health and human services shall develop emergency regulations governing the recommended uses of said fund in partnership with the Massachusetts League of Community Health Centers and the Massachusetts Hospital Association. The secretary shall file a report not later than September 1, 2004 to the speaker of the house of representatives, the president of the senate and to the house and senate committees on ways and means outlining the providers to be funded during fiscal year 2005 from the fund, the amount expended or to be expended for each provider pursuant to this section and the extent to which any portion of such expenditures are eligible for federal reimbursement. Any federal reimbursements received by the commonwealth for expenditures made from the fund shall be deposited into the fund.

### **Uncompensated Care Pool in Hospital Fiscal Year 2005**

SECTION 296. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2005, the division of health care finance and policy is authorized to administer, as provided in this section, the Uncompensated Care Trust Fund established by section 18 of chapter 118G of the general laws, to collect assessments as specified in section 1 of said chapter 118G for deposit to the fund, and make certain payments to acute hospitals and community health centers from the uncompensated care pool to offset the costs of services provided to uninsured residents. The division and the division of medical assistance may promulgate regulations to implement any of the provisions in this section.

The division, in consultation with the division of medical assistance and the executive office of health and human services, shall ensure that assessment liability to the fund and payments from the uncompensated care pool are structured in a manner that would secure for the General Fund the maximum allowable federal reimbursement under Title XIX, XXI or any successor federal statute.

In hospital fiscal year 2005, the total liability of all acute care hospitals to the fund shall be \$160,000,000 and the division of health care finance and policy shall calculate an assessment percentage rate by dividing \$160,000,000 by the projected annual aggregate private sector charges in the fiscal year for all acute care hospitals. Each acute care hospital's liability to the fund shall be equal to the product of the percentage rate and its "private sector charges".

In hospital fiscal year 2005, the total surcharge liability of surcharge payers to the uncompensated care trust fund shall be \$160,000,000. The surcharge amount for each surcharge payer shall be equal to the product of (a) the surcharge percentage and (b) amounts paid for services of an acute hospital or ambulatory surgical center by each surcharge payer. The division of health care finance and policy shall calculate the surcharge percentage by dividing

\$160,000,000 by the projected annual aggregate “payments subject to surcharge”, as that phrase is defined in section 1 of chapter 118G of the General Laws.

All title XIX federal financial participation revenue generated by hospital payments funded by the Uncompensated Care Trust Fund, whether the payments are made by the division of health care finance and policy or the division of medical assistance, shall be credited to the General Fund; provided however, that for fiscal year 2005, the comptroller shall transfer to the Uncompensated Care Trust Fund \$218,000,000 of the federal financial participation credited to the General Fund.

All hospital payments made pursuant to this section are subject to federal approval and conditioned on the receipt of full federal financial participation. All such payments shall be established in accordance with Title XIX of the Social Security Act, or any successor federal statute, any regulations promulgated thereunder and the Commonwealth’s Title XIX state plan; provided, that the division, in consultation with the division of medical assistance, the executive office of health and human services, the Massachusetts Hospital Association, and representatives of acute care hospitals, shall ensure that all funding for hospital payments made pursuant to this section through disproportionate share payments or Title XIX service rate adjustment payments, shall qualify for federal financial participation.

The division of health care finance and policy shall calculate an annual payment liability from the uncompensated care pool to each acute hospital for fiscal year 2005. In determining the liability amount, the division shall (a) ascertain each hospital’s reported unreimbursed free care costs from fiscal year 2004 and project the remaining months of hospital fiscal year 2004 using the most recent reliable data available, and shall also take into account such factors as available funding in the pool, the financial burden of hospitals that provide proportionately the largest volume of free care, medical inflation and the situation of any free-standing pediatric hospital with a disproportionately low volume of Title XVIII payments; provided further, that the division shall project every acute hospital’s cost growth for hospital fiscal year 2005 using a uniform growth factor determined from the prior twelve months and projecting forwards; and (b) allocate the available funds in a manner that pays to each hospital a fixed percentage of its projected free care costs for hospital fiscal year 2005, as determined by the division using prior year data and considering the total funds available for the purpose; provided further, that the fixed percentage shall not be less than 85 per cent of free care costs as defined in section 1 of chapter 118G of the General Laws for the 2 disproportionate share hospitals with the highest relative volume of free care costs in hospital fiscal year 2002, and not less than 88 per cent of free care costs, as defined under section 1 of chapter 118G of the General Laws, for the 10 acute hospitals with the next highest relative volume of free care costs in said year. In addition to those 12 disproportionate share hospitals, a teaching hospital located in Hampden county with high Medicaid utilization shall receive not less than 88 per cent of its free care costs reimbursed. All other acute hospitals shall receive the highest possible percentage of free care costs given available remaining funds. The hospital fiscal year 2005 annual liability amount to each hospital shall be funded by the trust fund; provided, that the liability may be satisfied through either a disproportionate share payment or adjustment to Title XIX service rate adjustment payment, or combination thereof, in accordance with the terms provided for in an agreement entered into by any acute hospital and the division of medical assistance. The comptroller shall transfer without further appropriation funds to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments.

The division shall maximize the use of other federally permissible funding mechanisms available for publicly-operated hospitals and hospitals with an affiliation with a publicly-operated health care entity to reimburse up to \$70,000,000 of uncompensated care costs at the hospitals using sources distinct from the funding made available to the trust fund under this section.

The division shall make payments from the uncompensated care pool for services provided by community health centers to uninsured residents in accordance with the relevant provisions of chapter 118G, and regulations promulgated under chapter 118G, in effect at the end of fiscal year 2004. Said division, in consultation with the division of medical assistance, the executive office of health and human services, and interested parties representing community health centers, shall develop a plan and take whatever steps necessary to adjust any or all payments made to community health centers for uncompensated care to be paid as Title XIX service rate adjustment payments, in accordance with Title XIX of the Social Security Act, or any successor federal statute, any regulations promulgated thereunder. The comptroller shall transfer without further appropriation funds determined by the division of health care finance and policy to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments under this section. The division of health care finance and policy shall submit a report by March 30, 2005, specifying the payments made to community health centers for uncompensated care paid as Title XIX service rate adjustment payments and the amount of federal reimbursement obtained and anticipated in hospital fiscal year 2005 from such payments. Said federal reimbursement shall be deposited to Uncompensated



Care Trust Fund and be appropriated by September 30, 2005, to be used by community health centers as provided by this paragraph and any other provider of free care.

In hospital fiscal year 2005, \$5,000,000 shall be transferred from the uncompensated care trust fund to the division of medical assistance, in collaboration with the division of health care finance and policy, to fund the start-up costs associated with the design and implementation of a cost-neutral pilot program of primary and preventive care and disease management of chronic conditions that will reduce the costs of federally mandated emergency care and the costs otherwise charged to the uncompensated care pool. Individuals eligible for said pilot program shall include but not be limited to recipients of emergency assistance for the elderly, disabled and children, elderly residents aged 65 or older and adults under age 65 who are disabled, blind or chronically ill. The division shall report back to the house and senate committees on ways and means on the cost neutrality of the pilot program and data on anticipated savings to the Uncompensated Care Pool by December 1, 2004.

In hospital fiscal year 2005, \$525,000,000 from the trust fund shall be credited to the uncompensated care pool for payments to acute hospitals provided for herein; provided, that an amount up to \$56,000,000 from the trust fund shall be credited to the pool for payments to community health centers provided for in this section; provided further, that \$28,000,000 of said \$56,000,000 payment for said community health centers, shall come from federal financial participation monies received from said \$28,000,000 expenditure. The comptroller shall transfer, without further appropriation, \$160,000,000 from the trust fund to the division of medical assistance for the purposes of meeting payment obligations for services provided pursuant to section 292 of this act.

#### **Uncompensated Care Pool Audit**

SECTION 297. The state auditor shall examine the practices in emergency rooms of all Massachusetts hospitals relative to uninsured patients and the billing practices from the uncompensated care trust. The auditor shall implement a comprehensive audit which shall include, but not be limited to: (1) assuring that hospitals are properly assisting enrollment of uninsured patients into MassHealth or other available programs; (2) assuring that free care charges hospitals are making to the free care pool are compliant with regulations and accurately represent costs incurred by uninsured patients; (3) assuring against cost diversion or shifting to the Uncompensated Care Pool that might be occurring in hospital emergency rooms. The auditor shall submit a report to the house and senate committees on ways and means on the results of the audits no later than January 20, 2005. For the purposes of said audits, allowable free care services shall be defined pursuant to chapter 118G of the General Laws.

#### **Managed Care Pilot Plan for Disabled MassHealth Members**

SECTION 298. Notwithstanding any general or special law or regulation to the contrary, the secretary of health and human services and the division of medical assistance shall seek any necessary federal waivers or regulation changes and develop a pilot program within the MassHealth primary care clinician plan for up to 25,000 disabled managed-care eligible MassHealth members. The program shall be contracted by an open bidding process and reimbursed by the division at a predetermined capitated rate for each such enrolled MassHealth member. Such pilot program may include the provision of primary care and pharmacy benefits through community health centers, hospital-licensed community health centers and disproportionate share hospitals. No later than 60 days prior to the implementation of said pilot program, the division of medical assistance shall notify the house and senate committees on ways and means and the secretary of administration and finance of the number of projected participants, the planned date of implementation, any expected reduction in spending resulting from the program, and the effect on the level of services available to participating members. Hospitals providing services to persons participating in the pilot program shall be required to report data on program participants, including service and billing information, to the division of health care finance and policy and to health maintenance organization managing the care of such participants. An evaluation of the quality and cost effectiveness of the pilot program, including any expected reduction in spending resulting from the provisions of this section and the effect on the level of services available to participating members and on the uncompensated care pool, shall be completed by the secretary in coordination with the auditor. The results of such evaluation shall be reported by the secretary to the house and senate committees on ways and means and the secretary of administration and finance, no later than March 1, 2005.

#### **UMass/Health and Human Services Interagency Service Agreements**

SECTION 299. Notwithstanding any general or special law to the contrary, including chapter 29 of the General Laws, the executive office of health and human services pursuant to section 16 of chapter 6A of the General Laws, acting in its capacity as the single state agency under Title XIX of the Social Security Act, and other federally assisted programs administered by said secretariat, and as the principal agency for all of the agencies within the secretariat, is authorized to enter into interdepartmental service agreements with the university of Massachusetts medical school to perform such activities as the secretary, in consultation with the comptroller, determines are appropriate and within the scope of the proper administration of said Title XIX and other federal funding provisions to otherwise support the programs and activities of the executive office. Such activities shall include, but not be limited to: (1) provision of administrative services, including, but not limited to, activities such as providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) consulting services related to quality assurance, program evaluation and development, integrity and soundness, and project management; and (3) activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third party liability and recouping payments to third parties. Said secretary, in consultation with the comptroller, shall submit monthly reports to the house and senate committees on ways and means detailing a list of ongoing and new projects undertaken by UMass medical school. Federal payments related to administrative services provided under said Title XIX or other federally assisted programs shall be distributed to said university. The secretary may negotiate contingency fees for activities and services related to the purpose of pursuing such federal reimbursement or avoiding costs, and the comptroller shall be directed to certify said fees and pay upon the receipt of such revenue, reimbursement or demonstration of costs avoided; provided however that the secretary shall not pay contingency fees in excess of \$30,000,000 for state fiscal year 2005. The secretary of health and human services shall submit to the secretary of administration and finance and the house and senate committees on ways and means a quarterly report detailing the amounts of the agreements, the amounts spent on personnel and the amount of federal reimbursement and recoupment payments the said university was able to collect. Profits resulting from services or products developed pursuant to this section and sold to other entities, public or private, shall be divided equally between the commonwealth and the university of Massachusetts medical school. The commonwealth's share of said profits shall be deposited into the General Fund.

#### **Patient Capacity for MassHealth Dentists**

SECTION 300. Notwithstanding any special or general law to the contrary, the executive office of health and human services, acting as the single state agency under Title XIX of the Social Security Act and chapter 118E of the General Laws, shall promulgate regulations authorizing dentists participating in the MassHealth program to reasonably limit the number of MassHealth patients in his or her practice; provided, that the executive office shall ensure that MassHealth patients currently receiving dental benefits will be able to retain their current dental provider; provided further, the executive office shall seek any waivers or agreements necessary from the federal government necessary to effectuate this section.

#### **Health Access Benefits Report**

SECTION 301. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall annually prepare a public health access program beneficiary employer report. For the purposes of this section, a "public health access program beneficiary" shall mean a person who receives medical assistance or medical benefits under chapter 118E of the General Laws or a person who receives health care services that qualifies as free care pursuant to chapter 118G of the General Laws. The report shall provide the following information for each employer of 50 or more public health access beneficiaries: (1) The name and address of the employer; (2) the number of public health access program beneficiaries who are employees of the employer; (3) the number of public health access program beneficiaries who are spouses or dependents of employees of the employer; (4) whether the employer offers health benefits to its employees; and (5) the cost to the Commonwealth of providing public health access program benefits for their employees and enrolled dependents. The report shall not include the names of any individual public health access program beneficiaries and shall be subject to privacy standards pursuant to Public Law 104-191, and the Health Insurance Portability and Accountability Act of 1996. The report shall be submitted annually on February 1 to the Joint Committee on Health Care and the House and Senate Committees on Ways and Means.

#### **Quinn Bill Reform II**

SECTION 302. Notwithstanding section 108L of chapter 41 of the General Laws or any general or special law to the contrary, any city or town which accepts said section 108L of said chapter 41 after August 1, 2002 and provides annual career incentive bonus payments for police officers, shall not be reimbursed by the commonwealth for the commonwealth's share of the those payments before fiscal year 2015.

#### **Uncapping the Lottery Distribution**

SECTION 303. Notwithstanding any general or special law to the contrary, beginning on July 1, 2007, of the amount otherwise payable to cities and towns pursuant to section 35 of chapter 10 of the General Laws, the total amount allocated for distribution to cities and towns shall be the sum of the amount distributed in fiscal year 2007 and: (i) in fiscal year 2008, 20 per cent of the difference between the fiscal year 2007 distribution and the amount that would otherwise be payable; (ii) in fiscal year 2009, 40 per cent of the difference between the fiscal year 2007 distribution and the amount that would otherwise be payable; (iii) in fiscal year 2010, 60 per cent of the difference between the 2007 distribution and the amount that would otherwise be payable; and (iv) in fiscal year 2011, 80 per cent of the difference between the fiscal year 2007 distribution and the amount that would otherwise be payable. For fiscal year 2012 and thereafter the distribution of lottery proceeds shall be determined pursuant to section 35 of chapter 10 of the General Laws.

#### **Municipal Finance Oversight Board IX**

SECTION 304. Notwithstanding any general or special law to the contrary, any indebtedness authorized by a city or town before July 31, 2003, that was subject to the debt limit prescribed by section 10 of chapter 44 of the General Laws, that was in excess of 2.5 per cent of the equalized valuation of the city or town but not in excess of 5 per cent of the equalized valuation of the city or town, and that was not approved by the emergency finance board as was required by said section 10 prior to July 31, 2003, may be issued only if such indebtedness is approved by the municipal finance oversight board.

#### **Repair of Damaged Culverts**

SECTION 305. Notwithstanding any general or special law to the contrary, the department of conservation and recreation shall expend necessary funds to repair and replace failed, failing and damaged culverts in the Sales Creek drainage channel of the cities of Revere and Boston, which are owned by said department and which pose potential public health emergencies by preventing adequate drainage of a major watershed, and to repair and restore the damaged surfaces in the area surrounding the collapsed or undermined culverts that pose potential public safety emergencies due to unstable ground and surface areas under Tomasello Road and other areas, roadways and drives.

#### **Tobacco Retailers Licensing Fee**

SECTION 306. Notwithstanding any general or special law to the contrary, the secretary of administration and finance shall increase licensing fees for wholesalers, vending machine operators and retailers as defined in section 1 of chapter 64C of the General Laws to a level that will generate revenues to an amount not less than \$3,750,000.

#### **Municipal Incentives for Smart Growth Zoning IV**

SECTION 307. (a) The department of housing and community development, in consultation with the department of education and the division of local services in the department of revenue, shall develop a formula for ascertaining any actual additional net public school costs to which cities and towns may become subject as a result of adopting the smart growth zoning districts described in chapter 40R for use in calculating those costs under subsection c of section 10 of chapter 40R, inserted by section 103. In developing the formula, the agencies shall take into account new tax and other revenues to which cities and towns may become entitled as a result of adopting those districts, and shall consider the impact of any legislative changes that may be proposed or adopted to chapter 70 education funding. The department of housing and community development shall report on the methodology it recommends, including an analysis of alternative methodologies they evaluated. The department of housing and community development shall submit its report to the clerks of the house and senate, the house and senate

committees on ways and means, the joint committees on taxation, housing and urban development and education, arts and humanities by January 31, 2005.

(b) No density bonus payments shall be made under subsection (a) of section 10, or under section 14, of chapter 40R of the General Laws, inserted by section 103 of this act, before July 1, 2005.

### **Long-Term Leasing of Urban Parks Rinks**

SECTION 308. (a) Notwithstanding section 54 of Chapter 7 of the General Laws, the division of capital asset management and maintenance, on behalf of and in consultation with the department of conservation and recreation, is hereby authorized, subject to the provisions of sections 40E to 40K, inclusive, of chapter 7 of the General Laws and using such competitive proposal process as the commissioner of said division deems necessary or appropriate, to lease and enter into other agreements, for terms not to exceed 20 years, to or with 1 or more offerors who participate in that process, for 1 or more skating rinks, so as to provide for the continued use, operation, maintenance, repair and improvement of the following state-owned buildings and facilities together with the land and appurtenances associated therewith, comprising those ice skating rinks and facilities formerly under the jurisdiction of the metropolitan district commission. For fiscal year 2005, this authorization shall only apply to the following rinks: Allied Veterans Memorial Rink, Everett; Connell Memorial Rink, Weymouth; Connery Memorial Rink, Lynn; Cronin Memorial Rink, Revere; Flynn Memorial Rink, Medford; LoConte Memorial Rink, Medford; Porazzo Memorial Rink, East Boston district, Boston; Shea Memorial Rink, Quincy; Simoni Memorial Rink, Cambridge; Ulin Memorial Rink, Milton; Veterans Memorial Skating Rink, Arlington; and Veterans Memorial Rink, Waltham.

There shall be an option for renewal or extension for operations and maintenance services not exceeding an additional 5 years. Such renewal or extension shall be at the discretion of the division of capital asset management and maintenance in accordance with the original contract terms and conditions or contract terms and conditions more favorable to the state.

Such leases and other agreements shall be on terms acceptable to the commissioner of the division of capital asset management and maintenance after consultation with the commissioner of the department of conservation and recreation, and, notwithstanding the provisions of any general or special law to the contrary, shall provide for the lessees to manage, operate, improve, repair and maintain the properties. Any such leases or other arrangements requiring capital improvements to be made to any buildings or surface areas shall include a description of the required capital improvements and, at a minimum, performance specifications. Such leases and other agreements shall provide that any benefits to the Commonwealth and the costs of improvements and repairs made to the properties provided by the tenants or the recipients of the properties shall be taken into account as part of the consideration for such leases or other agreements. The division, in consultation with the department, shall structure each lease or other agreement to minimize disturbance of the current rights of any tenants who may currently use any part of the rink or adjoining facilities, whether under a written lease or other arrangement. All consideration received from the leases or other agreements shall be payable to the division of capital asset management and maintenance for deposit into the General Fund. The lessees of said properties shall bear all costs deemed necessary or appropriate by the commissioner of the division of capital asset management and maintenance for the transaction, including without limitation, all costs for legal work, survey, title and the preparation of plans and specifications.

(b) The division of capital asset management and maintenance shall solicit proposals through a request for proposals which shall include key contractual terms and conditions to be incorporated into the contract, including but not limited to (1) a comprehensive list of all rinks operated by the responsive bidder or offeror in the last four years, (2) other facilities management or experience of the responsive bidder or offeror, (3) other skating or hockey management experience of the responsive bidder or offeror, (4) a residential discount program, (5) reservation policies, (6) proposed reasonable rates that will ensure continued public access, (7) required financial audits, (8) policies to encourage use of the rink by persons of all races and nationalities, (9) safety and security plans, (10) seasonal opening and closing dates, (11) hours of operation and (12) how the operator will satisfy the following ice time allocation guidelines. Ice time at rinks under the jurisdiction of the division of urban parks and recreation shall be allocated to user groups in the following priority order: general public skating; non-profit youth groups; school hockey; youth groups other than non-profit youth groups; and adult organizations or informal groups. Ice time may be allocated at the discretion of the operator, provided that general public skating shall be booked at a minimum of 12 hours per week, with a range of times and days which reasonably allow for public skaters of all ages to participate in some public skating sessions. Every effort shall be made to balance the ice allocation needs of long-established youth organizations and newly formed youth organizations in a manner that provides equal opportunity and equal access for youths of each gender.

No proposal to lease the Allied Veterans rink in Everett shall be deemed responsive without a proposal by the same offeror to lease the Cronin rink in Revere.

The Inspector General shall review and approve any request for proposal issued by the division before issuance.

The division, in consultation with the department, when evaluating proposals that are otherwise comparable, shall prefer any proposal to lease a rink or rinks that is submitted by a city or town where the rink or rinks are located, or by a non-profit youth hockey organization in the city or town where the rink or rinks are located, provided that the proposal complies with the ice time allocation guidelines outlined above.

(c) It shall be a mandatory term of any request for proposals issued by the commissioner and of any contract entered into by the Commonwealth with any party regarding the subject matter of this section that any party which has entered into a contract pursuant to this section with the Commonwealth shall require, in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the rinks be offered employment by any party entering into a contract pursuant to this section. Upon the execution of any agreements authorized by this section, the department of conservation and recreation shall attempt to reassign or relocate those employees who do not accept employment with the lessor, to comparable positions within the department subject to applicable collective bargaining agreements.

(d) The provisions of any general or special law or rule or regulation relating to the advertising, bidding or award of contracts, to the procurement of services or to the construction and design of improvements shall not be applicable to any selected offeror which is awarded a contract pursuant to this section, except as provided in this section.

(e) The division and the department shall report on the results of any requests for proposals and subsequent leases executed as a result of this section. The report shall include, but not be limited to, the following: the time required to conduct the request for proposals process; the quality and characteristics of the bids received in response to the request; the criteria used to identify successful bidders; the dates of any executed leases; any service changes resulting from executed leases; any increase or decrease in the length of the season of operations for the rink; the capital improvements that have been completed, are under construction or are planned for construction; and the monetary results of any executed leases. The report shall include recommendations for whether the remaining rinks formerly under the jurisdiction of the former metropolitan district commission should be the subject of a request for proposals for fiscal year 2006. The report shall be submitted to the clerks of the house and senate and to the house and senate committees on ways and means no later than February 1, 2005.

### **Pension Reform XXIII**

SECTION 309. A special commission is hereby established to investigate and study the feasibility of restructuring the current public retirement plan established under chapter 32 of the General Laws, including but not limited to the calculation of superannuation retirement allowances for members classified as Group 1, analysis of alternative calculations of said allowances, including comparison of member eligibility, vesting, portability, the contribution rate of members, other benefits and the effects on accrued liabilities and costs attributable to such alternative calculations. The commission shall consist of 11 members as follows: the house and senate chairmen of the joint committee on public service, who shall serve as co-chairs of the commission; the house and senate chairmen of the committees on ways and means, or their designees; the governor or his designee, the secretary of administration and finance or his designee, a representative of the Massachusetts Municipal Association, a representative of the Massachusetts Association of Contributory Retirement Systems; the chairmen of the state teachers' retirement board and the state retirement board, or their designees, the chairman of the public employee retirement administration commission, or his designee. The commission shall report to the general court the results of its study together with its recommendations and draft of legislation necessary to carry such recommendations into effect by filing the same with the clerk of the house of representatives, the joint committee on public service and the house and senate committees on ways and means on or before December 31, 2004.

### **Pension Reform XXIV**

SECTION 310. Notwithstanding the provisions of any general or special law to the contrary, the public employee retirement administration commission shall review the current combined table of mortality and select a new table of mortality within 180 days of the effective date of this act.

### **Certain Capital Gains Liability**

SECTION 311. Notwithstanding section [HF-127R.CH] the commissioner of revenue shall not adjust the tax liability with respect to capital gains for the period January 1, 2002 to April 30, 2002 for any taxpayer who, before the effective date of this act, paid that liability in full for capital gains realized between January 1, 2002 and April 30, 2002, inclusive.

### **Town of Pembroke Town Treasurer and Town Collector**

SECTION 312. The position of town treasurer and town collector in the town of Pembroke shall be combined and the combined position shall be appointed by the board of selectmen of the town for a term not to exceed 3 years and the person so appointed shall have all of the powers and duties by law vested in the office of the town treasurer and town collector. Any vacancy in such office shall be filled in like manner. The board of selectmen may remove any person so appointed for cause after a hearing.

Notwithstanding the foregoing, the incumbent holding the offices of town treasurer and town collector on the effective date of this act shall continue to hold such offices and to perform the duties thereof until the expiration of the terms for which she was elected, unless she sooner vacates such offices. After the term of the incumbent town treasurer and town collector holding such offices on the effective date of this act have both expired, or both offices are sooner vacated, the board of selectmen shall appoint a treasurer/collector in the manner set forth above. Should the incumbent town treasurer remain in office, upon the expiration of her term in 2005, the board of selectmen will appoint her interim town treasurer until her term as collector expires in 2006. The board of selectmen may appoint a treasurer/collector as described above.

Notwithstanding chapter 32 of the General Laws, section 116 of chapter 46 of the acts of 2003 or any other general or special law to the contrary, the incumbent treasurer and collector on the effective date of this section shall be eligible for retirement under section 116 of chapter 46 of the acts of 2003, provided however, that said incumbent must file an application for retirement by a date to be determined by the board of selectmen, such date to be not later than September 6, 2004, and provided further that notwithstanding section 5 of chapter 32, requiring a retirement date within 4 months of filing of an application for superannuation retirement, the board of selectmen may determine a retirement date not earlier than September 6, 2004 and not later than her term ending on April 30, 2005.

### **Elevator Inspection Fees**

SECTION 313. Notwithstanding any general or special law, rule or regulation to the contrary, the division of inspection and secretary for administration and finance shall amend regulations to reflect the following changes in fees: (a) fees for annual elevator inspections shall be at least \$400 per inspection, and (b) fees for an overtime elevator inspection, defined as inspections taking place after 5:00 p.m. or during weekend hours, shall be at least \$500 per inspection.

### **Electronic Bid Specifications**

SECTION 314. Notwithstanding any general or special law to the contrary, the secretary of administration and finance, in consultation with the chief information officer and the commissioner of capital asset management and maintenance, shall establish guidelines to make any plans and specifications required under section 44B of chapter 149 of the General Laws available in electronic format for any person requesting them no later than July 1, 2005.

### **Elimination of Port Designation**

SECTION 315. Notwithstanding any general or special law, rule or regulation to the contrary, a certain parcel of land located on the westerly side of Border Street in the East Boston section of the city of Boston shall not be a Designated Port Area under regulations of the executive office of environmental affairs and the department of environmental protection.

The parcel is located at 80 Border Street, East Boston, assessors parcel number 01-05412002, and shown on a plan entitled Plan of Land 80 Border Street Boston (East), Mass. Dated 3/31/2004 and contains approximately .514 acres of land.

### **Committee for Public Counsel Services Commission and Study**

SECTION 316. There shall be a commission to study the provision of counsel to indigent persons who are entitled to the assistance of assigned counsel either by constitutional provision, or by statute, or by rule of court. The commission shall be composed of 11 persons, including 1 member to be appointed by the speaker of the house of representatives; 1 by the president of the senate; 1 by the house chair and 1 by the senate chair of the joint committee on the judiciary; the chief justice of the supreme judicial court or her designee; the chief justice for administration and management of the trial court or his designee; the commissioner of probation or his designee; the chief counsel of the committee for public counsel services; the chairman of the committee for public counsel services; a staff attorney employed by, and a private attorney who accepts assignments from the committee for public counsel services, to be appointed by that committee.

The commission shall examine all aspects of the provision of counsel in such cases, including but not limited to (i) the frequency of the assignment of counsel to indigent persons; (ii) the feasibility of changes, consistent with chapter 211D of the General Laws, to control or reduce the frequency of case assignments; (iii) the cost of providing counsel in such cases; (iv) the adequacy of existing procedures for determining and verifying the eligibility of persons who request the assignment of counsel; (v) the adequacy of existing procedures for the assessment and collection of counsel fees from persons who have been determined to be eligible for assigned counsel; (vi) the existing balance, and the adequacy of that balance, in each practice area and county between the provision of legal representation by salaried staff counsel and certified private counsel; (vi) the frequency with which neither salaried staff counsel nor certified private counsel are available to represent a defendant entitled to publicly funded representation; and (vii) the impact of the current hourly rate paid to certified private counsel on the availability or non-availability of such counsel to defendants entitled to publicly funded representation.

The commission shall report its findings and recommendations to the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate committees on ways and means on or before February 1, 2005.

### **Cape Cod Sex Offender Management Commission**

SECTION 317. There shall be a special commission to conduct an investigation and study of ways in which to improve the regional uniform protocol for sex offender management. The commission shall consist of 2 members appointed by the secretary of the executive office of public safety; 1 member appointed by the Barnstable county sheriff; 1 member appointed by the Cape and Islands district attorney's office; and 2 members appointed by the Cape Cod Police Chiefs Association. The commission's duties shall include, but not be limited to: (1) examination of the long and short-term affects of requiring sex offenders to register 90 days before their release from custody and declare the municipality in which they plan to reside and of requiring transfer to the house of correction in the county in which they plan to reside 30 days prior to their release; (2) investigation to determine whether proposed legislative changes to expand the role of regional hearing officers, the use of local databases, and the use of local houses of correction for prisoner transfer and pre-release registration and classification would increase public safety; (3) evaluation of the pilot program established in section 249, including a recommendation on whether the protocol could be successfully implemented statewide; and (4) evaluation of potential changes in the sex offender registry statute and the civil commitment statute to achieve regional efficiencies in sex offender management throughout the commonwealth. The commission shall report the results of its investigation and its recommendations and shall submit drafts of any proposed legislation necessary to implement its recommendations by filing the same with the clerks of the senate and house of representatives on or before June 30, 2005.

### **Undersecretary to Make Recommendations on Consolidation of Criminal Forensic Services and a New Crime Lab**

SECTION 318. The undersecretary of public safety for forensic sciences shall prepare a report and recommendations, including draft legislation if so required, to the house and senate committees on ways and means and the house and senate joint committee on criminal justice by January 1, 2005 on the further coordination and consolidation of the Commonwealth's criminal forensic services, including but not limited to computer forensics, controlled substance testing, toxicology services and an automated evidence tracking system accessible to end users. The undersecretary, following consultation with the division of capital asset management, shall also provide a recommendation to said committees for the design, placement and funding for a new state police crime laboratory. Upon written request by the undersecretary, all executive agencies, county sheriffs, municipalities, public

universities and any other entity receiving state funding to perform forensic services on behalf of the Commonwealth, shall provide all documentation and information necessary to determine the type, scope, volume and cost of such forensic services. The report shall identify the costs of these services in fiscal year 2004.

### **Energy Savings Commission**

SECTION 319. (a) There shall be a special commission to study the energy consumption of the government of the commonwealth. The commission shall specifically review the annual level and cost of energy consumption by executive offices, departments, agencies and divisions of the commonwealth's government over the past 3 fiscal years and shall develop a plan to conserve energy by reducing the government's annual energy consumption rates by at least 10 per cent compared to the average consumption rates over the past 3 fiscal years and by increasing the use of energy efficiency methods. The commission shall investigate and devise a plan to include renewable energy sources in the government of the commonwealth's energy portfolio. The commission shall also study the feasibility of utilizing innovative contracting and capital improvement planning to increase energy efficiency and reduce energy expenses in commonwealth facilities. The commission shall hold at least 4 statewide public hearings as part of its review. The commission shall report its findings and any proposed legislation to the clerks of the senate and the house of representatives not later than March 1, 2004. A copy of such report shall also be submitted, by said date, with the secretary of administration and finance, who shall take steps necessary to implement the recommendations of the commission.

(b) The special commission shall consist of 16 members. 8 members shall be appointed by the governor, including the chair of the department of telecommunications and energy, or his designee; the commissioner of energy resources, or his designee; the commissioner of the division of capital asset management and maintenance, or his designee; the secretary of administration and finance, or his designee; the secretary of transportation, or his designee; the president of the University of Massachusetts or his designee; the superintendent of state office buildings or his designee; and a representative from the Massachusetts Technology Park Collaborative. 4 members shall be appointed by the senate president, including the senate chair of the joint committee on energy and the senate minority leader or his designee; a representative from the International Brotherhood of Electrical Workers; and a representative from an organization that addresses energy conservation issues. 4 members shall be appointed by the speaker of the house of representatives, including the house chair of the joint committee on energy and the house minority leader or his designee; a representative from the National Association of Government Employees; and a representative from an organization that addresses energy conservation issues.

### **Substance Abuse Study**

SECTION 320. The secretary of health and human services, the commissioner of public health and the secretary of administration and finance shall conduct a study and create a report on all substance abuse spending by all the various agencies in the commonwealth, including but not limited to, payroll, contracts, testing, supplies, treatment and services. This study shall also include, at a minimum, the executive office of health and human services, the department of correction, the Massachusetts court system, the department of probation and the various sheriff's departments. The scope of the inquiry shall include, but shall not be limited to: reviewing the current spending on substance abuse, devising a plan for maximizing federal reimbursements from the Substance Abuse Prevention and Treatment Block Grant, and providing any recommendations to maximize the federal grants. The report shall be submitted House and Senate Committee on Ways and Means and the Joint Committee on Health Care no later than January 1, 2005.

### **A Study of Workforce Issues Facing Individuals with Mental Retardation**

SECTION 321. A special commission is hereby established for the purpose of making an investigation and study relative to workforce issues in those agencies serving people with mental retardation in the commonwealth. The issues shall include, but not be limited to, recruitment, retention and all other barriers that might impact the quality of employment for individuals with mental retardation. The commission shall consist of 2 members of the senate appointed by the president of the senate, 2 members of the house of representatives appointed by the speaker of the house of representatives, the secretary of the executive office of health and human services or his designee, the commissioner of the department of mental retardation or his designee, 1 person who is a member of the Association of Developmental Disabilities Providers, 1 person who is a member of Arc Massachusetts and the chairman of the governor's commission on mental retardation or his designee. The commission shall also have the



authority to utilize existing data collected by vendor agencies, state and federal government agencies relative to workforce issues, and to collect additional data from relevant agencies and providers and study groups. The commission shall file a report with the results of its investigation and recommendations, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerks of the senate and the house of representatives no later than March 15, 2005.

#### **Drug Prior Authorization Program Annual Report**

SECTION 322. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall submit on or before February 1, 2005 to the house and senate committees on ways and means a report detailing the cost-effectiveness of the drug prior authorization program, including an analysis of: (a) the direct cost of the prior authorization program; (b) the estimated amount, if any, of cost shifting to physicians in terms of additional time spent in obtaining authorization for a selected course of therapy; (c) internal program costs shifting, if any, including but not limited to additional prescriptions, laboratory tests, physician visits, hospitalization, and skilled nursing care that are associated with implementation of the prior authorization program. The report shall include all therapeutic classes that are currently subject to prior authorization. Any contractor retained to develop and prepare the report shall not be related to any contractor retained by the state to develop and implement the prior authorization program.

#### **Children's and Seniors' Health Care Assistance Fund Report**

SECTION 323. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall submit a report on the long-term solvency of the Children's and Seniors Health Care Assistance Fund; provided, that this report shall make recommendations on possible methods to ensure the long-term compliance of this fund with section 9B of Chapter 118E of the General Laws; provided further, that the report shall include, but not be limited to, an analysis of the appropriateness of directing all tobacco taxes to the fund. The report shall make recommendations on the feasibility of securing revenue from other sources. The secretary shall submit a report with recommendations to the house and senate committees on ways and means and the joint committee on health care no later than December 1, 2004.

#### **MassHealth Projected Expenditures Report**

SECTION 324. Notwithstanding any general or special law to the contrary, the executive office of health and human services shall submit a report to the house and senate committees on ways and means detailing projected expenditures for fiscal years 2004 and 2005 for items 4000-0300, 4000-0320, 4000-0430, 4000-0500, 4000-0600, 4000-0700, 4000-0860, 4000-0870, 4000-0875, 4000-0880, 4000-0890, 4000-0891, 4000-0895, 4000-0990 and 4000-1400. In identifying the projected expenditures, the report shall account for any and all assumptions used to project promulgated or projected changes in provider payment rates, average per-member-per-month expenditure amounts, and the methods used to estimate current and prospective beneficiary enrollment and benefit utilization trend. The report shall include monthly member-month caseload, date-of-service and date-of-payment expenditure data by provider type and health benefit plan; provided further, that the report shall detail by item of appropriation any updates or budgetary revisions made subsequent to the governor's budget submission for fiscal year 2006 recommendations, including, but not limited to, any assumptions used to develop the recommendations. The report shall be submitted not later than February 15, 2005.

#### **Transportation Finance Commission Transportation Reform XXVII**

SECTION 325. A special Transportation Finance Commission is hereby established to develop a comprehensive, multi-modal, long-range, transportation finance plan for the commonwealth.

The commission shall have 13 members, including the following: 5 members who shall not be employees of the executive branch and who shall reside in different geographic regions of the commonwealth, 1 of whom shall be a representative of a chamber of commerce of a city or town of the commonwealth, to be appointed by the governor to serve terms of 2 years; 3 members, who shall not be members of the general court and who shall reside in different geographic regions of the commonwealth, to be appointed by the president of the senate to serve a term of 2 years; and 3 members, who shall not be members of the general court and who shall reside in different geographic

regions of the commonwealth, to be appointed by the speaker of the house of representatives to serve a term of 2 years; a representative of the Massachusetts Taxpayers Foundation; and a representative of the Massachusetts Business Roundtable. Each of the members of the commission shall be an expert with experience in the fields of law or public policy, transportation planning, or design and construction of transportation projects. One of the members appointed by the Governor, 1 of the members appointed by the president of the senate, and 1 of the members appointed by the speaker of the house of representatives shall be representatives of the Massachusetts business community. One of the members appointed by the Governor, 1 of the members appointed by the president of the senate, and 1 of the members appointed by the speaker of the house of representatives shall be representatives of environmental organizations, planning organizations, transportation consumer organizations or other public interest organizations. One of the members appointed by the Governor shall be an expert in the field of management consulting or organizational change. One of the members appointed by the Governor shall be an expert in the field of public finance. One of the members shall be appointed by the Governor to serve as chairperson of the commission. The members of the commission shall be appointed no later than September 1, 2004.

In the course of its deliberations, the commission shall examine the transportation needs of the commonwealth for the next 25 years as identified in the short and long-term transportation plans developed by the executive office of transportation, the state transportation improvement program, the program for mass transportation, the capital investment programs of the Massachusetts Bay Transportation Authority, the regional transit authorities, the Massachusetts Turnpike Authority and the Massachusetts Port Authority; environmental mitigation agreements executed in connection with the Central Artery/Tunnel Project; and other transportation needs as identified by the commission. The commission shall consider all modes of transportation, including highways and roads, passenger rail and other public transportation, freight rail, aviation, shipping and water transportation.

The commission shall make a priority of examining the technical and financial feasibility of sustaining and expanding the public transit system and evaluate proposed transit projects based on their transportation, economic and environmental benefits relative to costs. The commission shall also examine the capital needs of cities and towns to be financed under existing commonwealth programs, including but not limited to the chapter 90 program, so-called, and the funding available for the programs for such period as can be practically examined. The commission shall also identify areas where cost savings can be achieved across transportation agencies via consolidation, coordination, and reorganization.

The commission shall examine the projected federal funding, projected state funding, projected toll and fare revenue-based funding, debt financing, and any other sources of projected funding to finance the transportation needs identified by the commission. The commission shall develop recommendations as to what funding or finance measures the commonwealth or any of its transportation agencies may pursue to satisfy any unmet funding needs identified by the commission. The recommendations shall also include any recommendations for inter-agency agreements, consolidations, or mergers that will enable the commonwealth to make the most effective use of its transportation funding resources. The recommendations of the commission shall be designed to identify fair and equitable means of financing transportation investments through taxes, tolls, fares and other user charges.

The commission shall develop a report detailing its findings relative to identified transportation needs and identified funding sources, including a draft of any legislation required to implement its recommendations. The commission shall submit its initial report to the governor, the secretary of transportation, the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on transportation no later than December 31, 2004. The commission shall file an updated plan each year thereafter, not later than December 31.

Any research, analysis or other staff support that the Commission reasonably requires shall be provided by the executive office of transportation.

#### **DCR Licensing of Restricted Vehicles IV**

SECTION 326. The division of urban parks and recreation and the Massachusetts Bay Transportation Authority shall, within 180 days of the effective date of this act, provide a joint report to the clerks of the senate and house of representatives, the house and senate committees on ways and means and the joint committees on transportation, natural resources and agriculture and public safety providing a formal process for reviewing the use of the roads, driveways, parkways, boulevards and bridges under the jurisdiction of the division by the buses under the care and control of the Massachusetts Bay Transportation Authority.

#### **Group Insurance Commission Report of Human Service Vendors**

SECTION 327. Notwithstanding any general or special law to the contrary, the group insurance commission shall report on the feasibility of developing and implementing a voluntary health care plan for employees of private health and human service providers who deliver services under contract with departments within the executive office of health and human services and the executive office of elder affairs with no administrative and programmatic costs to the commonwealth. The report shall include providers who deliver services by rate. The commission, in consultation with the executive office of health and human services, the executive office of elder affairs and the department of public health, shall report on the eligibility criteria required for the service providers in the plan and shall report on the costs of maintaining a separate health care risk pool for individuals in the plan. The report shall assume that health care costs and administrative costs of the plan shall be paid by eligible service providers and their employees. The commission may develop a methodology to garnish human service contracts from other state agencies for such participating providers to facilitate implementation of the plan and to recoup administrative and premium costs. The report shall include, but not be limited to the following: (1) the number of covered lives to be enrolled in said plan, (2) the number of employees to be enrolled in said plan who previously had no health coverage, (3) the total health care expenditures of said plan, and (4) the premium amounts of the plan. The report shall be filed with the clerks of the house and senate and the house and senate committees on ways and means on or before January 1, 2005. The commonwealth shall not be obligated for any costs incurred by this report.

### **Nurse Staffing Ratio Study**

SECTION 328. There shall be a special commission to be known as the Patient Care and Nursing Staff Commission. The commission shall consist of the following 23 members: the house and senate chairs of the joint committee on health care, who shall serve as co-chairs of the commission, the chair of the house committee on Medicaid or his designee, the house and senate chairs of the joint committee on commerce and labor or their designees, the house and senate chairs of the joint committee on education, arts and humanities or their designees, 4 members selected by the speaker of the house, 1 member selected by the minority leader of the house, 3 members selected by the senate president, 1 member selected by the minority leader of the senate, the president of the Massachusetts Nurses Association or his designee, the president of the Massachusetts Business Roundtable or his designee, the president of the Massachusetts Hospital Association or his designee, the president of the Massachusetts Association of Health Plans or his designee, the president of the Massachusetts Organization of Nurse Executives or his designee, the secretary of the executive office of health and human services or his designee, and the president of the Associated Industries of Massachusetts or his designee.

The commission shall study and evaluate the feasibility of establishing and maintaining minimum standards for the number of registered nurses per patient in all acute care hospitals and facilities throughout the commonwealth. The study shall include, but not be limited to, the following: (i) the effect of creating an acuity based patient classification system as a formula for establishing a minimum direct care registered nurse to patient ratio standard for all acute care hospitals and facilities within the commonwealth; (ii) the fiscal impact, including the potential for closure, of mandating such minimum standards upon acute care hospitals licensed by the department of public health; (iii) the fiscal and regulatory impact of similarly enacted legislation upon other states, including but not limited to the state of California; (iv) the impact upon both overtime work for nurses of facilities in compliance with such standards as well as registered nurse turnover rates; (v) the impact such a standard would have upon staffing levels of both part-time nurses and licensed practical nurses; and (vi) the impact such a standard will have upon replenishment of nurses to the professional workforce.

The commission shall report its findings, including legislative recommendations, to the house and senate committees on ways and means and the joint committee on health care no later than January 31, 2005.

### **21<sup>st</sup> Century Workforce Development and Training Council**

SECTION 329. Notwithstanding the provisions of any general or special law to the contrary, there is hereby established the 21<sup>st</sup> Century Workforce Development and Training Council. The council shall meet to develop and recommend policies that advance skills and workforce development opportunities for incumbent adult workers who lack skills in areas that include but are not limited to mathematics, reading, writing, science and technology, adult workers who have not advanced to post-secondary education, adult immigrants who seek to learn English and adults without a high school degree, displaced and older workers and individuals not currently connected to the workforce.

The council shall develop recommendations that include, but are not limited to the following: (1) the development of a basic-skills program to establish entry-level qualifications to the workforce; (2) strategies for increasing the number of students that complete associate degrees at state community colleges in vocational fields

where there is projected future market growth; (3) the development of a statewide plan to improve English for speakers of other languages (ESOL) programs through the use of technology, public/private partnerships, increased employer involvement in workplace literacy programs and other financing strategies; (4) strategies for increasing workforce training opportunities and resources for incumbent worker training programs; (5) strategies for increasing training opportunities and resources for displaced and older workers and individuals not currently connected to the workforce; and (6) an evaluation and analysis of the present governance and coordination of workforce development agencies and programs in Massachusetts and recommendations for improving coordination, oversight, streamlining bureaucracy and maximizing resources, including but not limited to the Workforce Training Fund.

The council shall consist of the following members: 2 members to be appointed by the governor, 1 of whom shall be the director of the department of workforce development, or his designee, 2 members to be appointed by the president of senate, 2 members to be appointed by the speaker of the house of representatives, the chancellor of the board of higher education or his designee, 1 member from the Massachusetts Business Roundtable, 1 member from the Associated Industries of Massachusetts, 1 member of the Massachusetts Institute for a New Commonwealth, 1 member from the AFL-CIO, 1 member from the Service Employees International Union, 1 member from the Massachusetts Workforce Investment Board Association, 1 member from the Massachusetts Coalition for Adult Education, 1 member from the Community College Council of Presidents, 1 member from the state Workforce Investment Board, and 2 members representing community based organizations and immigrant populations with 1 selected by the Massachusetts Immigrant and Refugee Advocacy Coalition and 1 selected by the Massachusetts Workforce Alliance, 1 member from the Commonwealth Corporation and a representative from JFY Networks.

The council shall be chaired by the director of the department of workforce development and shall file a report to the clerk of the house and senate, the house and senate committees on ways and means and the joint committee on commerce and labor, not later than October 1, 2004.

#### **Electronic Pay-slip Study**

SECTION 330. The secretary for administration and finance, in conjunction with the division of human resources, the office of the treasurer, the office of the state comptroller, and any other agencies the secretary deems appropriate, shall investigate and study the feasibility of using electronic pay slips as a form of wage payment to all employees throughout state agencies. The secretary shall submit a report to the house and senate committees on ways and means not later than December 31, 2004 that shall include, but not be limited to, possible administrative cost-savings, necessary changes to the General Laws for the promulgation of electronic pay slips, and possible costs associated with the implementation and production of electronic pay slips.

#### **Municipal Employee Health Care Task Force**

SECTION 331. Notwithstanding any general or special law to the contrary, there shall be a task force on municipal health insurance issues to conduct a review of the current cost crisis relating to the provision of health care and health care insurance to municipal employees, including an evaluation and recommendation of short-term and long-term health care cost containment and mitigation strategies. This review shall include at least 2 public hearings, 1 of which shall be held in the western 4 counties of the commonwealth. The task force shall solicit testimony regarding innovative ways that municipalities might serve their employees while also containing health care costs to reasonable and acceptable levels. The committee shall report back to the house and senate committees on ways and means and the joint committee on health care with recommendations and legislation, if any, no later than March 1, 2005.

The co-chairs of the joint committee on health care shall chair the task force. Other members shall include 2 representatives of the metropolitan mayors coalition, 1 representative of the metropolitan area planning council, 2 representatives of the Massachusetts municipal association, 3 state senators appointed by the senate president, 3 state representatives appointed by the speaker of the house of representatives, 1 representative of the Massachusetts Teachers Association, 1 representative of the Massachusetts Federation of Teachers, 1 representative of the Professional Firefighters of Massachusetts, 1 representative of the International Brotherhood of Police Officers, 1 representative of the American Federation of State, County and Municipal Employees, and 1 representative of the Service Employees International Union.

#### **Northeastern Massachusetts Nursing Institute Study**

SECTION 332. Notwithstanding any general or special law to the contrary, the Board of Higher Education shall study the feasibility of developing a Northeastern Massachusetts Nursing Institute, through the collaboration of

Salem State College, Northern Essex Community College, North Shore Community College and hospitals in the area of northeastern Massachusetts, for the purpose of developing and sharing resources for nursing education in the commonwealth.

### **Special Commission on No Child Left Behind Act**

SECTION 333. There is hereby established a special commission to investigate, study and report on fiscal impacts, at the state, municipal and local level of the federal Elementary and Secondary Education Act, known as No Child Left Behind. Said commission shall consist of the speaker of the house of representatives or a designee thereof, the president of the senate or a designee thereof, the chair of the house committee on ways and means or a designee thereof, the chair of the senate committee on ways and means or a designee thereof, the house and senate chairs of the joint committee of education, arts and humanities, the house and senate chairs of the joint committee on taxation, the minority leader of the house or a designee thereof, the minority leader of the senate or a designee thereof, the secretary of administration and finance, and one member appointed by the commissioner or head following organizations; the department of revenue, the Massachusetts Taxpayers Foundation, the department of education, the Massachusetts Association of School Superintendents, the Massachusetts Municipal Association, the Massachusetts Association of School Committees, MassINC, the Massachusetts Federation of Teachers and the Massachusetts Teachers Association. Said commission shall be chaired by the chairs of the joint committee on education, arts and humanities.

The scope of said commission's inquiry should include but not be limited to: fiscal impacts of federal unfunded mandates on the current public education funding formula, costs of yearly data collection and reporting, impacts of top down accountability, and impacts of testing mandates on the Commonwealth. The commission shall consider whether the system of adequate yearly progress diverts money away from the early grades by focusing on grades three through eight, and shall assess whether adequate yearly progress actually assesses the value added by school systems. The commission shall consider whether federal testing standards distort the Commonwealth's accountability system established in section 11 of Chapter 69 of the General Laws or encourages states to lower their standards of accountability in order to show progress under to federal law. The commission shall assess the extent of the difference between funding promised by the federal government under No Child Left Behind and the Individuals with Disabilities Education Act and the funds actually available to cities and towns in Massachusetts in fiscal year 2004, and shall assess to what extent No Child Left Behind represents an unfunded mandate to cities and towns. The commission shall consider whether the Commonwealth should seek a waiver to be exempted from some or all aspects of the No Child Left Behind Act. The commission shall submit its report to the house and senate committees on ways and means, the department of education, the department of revenue and the joint committee on education, arts and humanities no later than June 30, 2005 along with any drafts of proposed legislation.

### **Transportation to Special Education Day Programs**

SECTION 334. Notwithstanding any general or special law or regulation to the contrary, there shall be a special commission to study and report on methods to reduce the cost of transportation for students with disabilities to out-of-district special education placements. The commission shall consist of the co-chairs of the joint committee on education, arts, and humanities, who shall serve as chairs of the commission, and 1 representative each from the operational services division of the division of purchased services, the department of education, the Massachusetts Association of School Superintendents, the Massachusetts Association for Special Education Administrators, the Massachusetts Organization for Educational Collaboratives, the Massachusetts Association of 766 Approved Private Schools and the School Transportation Association of Massachusetts. The scope of the commission's inquiry shall include, but shall not be limited to: the regulation of reasonable and allowable transportation costs by the operational services division, the use of educational collaboratives to coordinate or provide transportation services to students with disabilities to out-of-district programs and the establishment of regulations by the department of education to permit the exchange of student information necessary to coordinate transportation routes to out-of-district programs. The commission shall submit its report to the house and senate committees on ways and means and the joint committee on education, arts, and humanities not later than January 30, 2005, along with drafts of any legislation.

### **Administrative Records List**

SECTION 335. The jury commissioner shall establish an administrative records list of the Commonwealth's residents 17 years and older for the purpose of testing the feasibility of using such a list for the creation of jury

pools. The following state agencies shall provide in electronic form a list of residents 17 years and older contained in their respective databases: the state secretary, registry of motor vehicles, department of revenue, department of transitional assistance, and division of unemployment assistance. In addition, cities and towns that conduct an annual census shall provide such data, and all state colleges and university campuses shall provide such data from enrollment records. The lists shall contain, name, residential address, mailing address and date of birth to the extent that they possess this information, in a format to be specified by the jury commissioner. In those cases where a federal waiver or authorization is needed in order to provide this information, each agency or entity shall take all necessary steps to seek such authorization or waiver. No information shall be provided to the jury commissioner beyond that required to create the administrative records list. The jury commissioner shall treat the lists and the information contained in them confidential to the extent required by law. Nothing shall be included in the administrative records list that would indicate from which source list the information on any individual resident was derived. The commissioner may secure and use additional lists from non-governmental institutions and sources in order to create the administrative records list. The commissioner shall provide in electronic form a copy of the administrative records list to the state secretary for purposes of testing its use to maintain voter registration lists and testing its use as a source for street lists for the cities and towns of the commonwealth. Testing of the administrative records list shall not replace or alter any requirement of present law for creating jury pools, maintaining voting lists or establishing street lists, until further act of the general court. The jury commissioner and the state secretary shall report their findings and recommendations based on the testing required by this section to the clerks of the senate and house of representatives not later than June 30, 2006.

#### **Community Preservation Act Study**

SECTION 336. Notwithstanding any general or special law to the contrary, there I hereby established a Special Commission on the Community Preservation Act to conduct a review of the operation of the Community Preservation Act, established in Chapter 44B of the General Laws, including an assessment of whether limiting access to the program to imposition of a property tax surcharge is the most effective way of meeting community preservation needs, as defined in said the chapter, throughout the commonwealth. This review shall include at least two public hearings, one of which shall be held in the western four counties of the commonwealth. The special commission shall solicit testimony regarding innovative ways that municipalities might generate local revenue streams that could qualify for matching funds from the Community Preservation Trust Fund. The committee shall report back to the House of Representatives and the Senate with recommendations and legislation, if any, no later than March 1, 2005.

#### **Executive and Management Reform**

SECTION 337. The secretary of administration, in collaboration with the personnel administrator, shall conduct a comprehensive review and analysis of executive and managerial compensation and shall report the results of the study to the house and senate committees on senate ways and means and the joint committee on public service not later than October 1, 2004. The report shall include, but not be limited to, a review of all executive branch employees, employees of the governor's office and the executive office of administration and finance whose annual salary is \$100,000 or more. The study shall also analyze the management salary schedule established in section 46 of chapter 30. The report shall include, but not be limited to, an analysis of the operation of the salary schedule, including the number of managers in each job group at each increment step, how salaries for managers are initially set, how the performance of managers is reviewed and how increases or increments are given. The administrator shall make recommendations regarding whether and how the schedule should be adjusted, including whether job grades or steps should be increased or eliminated and on other methods of salary administration, including management performance evaluations.

#### **Commission on Hynes Convention Center**

SECTION 338. There shall be a commission to study, make recommendations and propose any legislation related to the use, reuse, lease, sale, conveyance, or any disposition of any interest in the Hynes Memorial Auditorium and the Boston Common Parking Garage. The commission shall consist of 3 persons to be appointed by the governor, 1 of whom shall be the chairperson of the Massachusetts Convention Center Authority or his designee, and 1 of whom shall be a representative of the Back Bay Association; 3 persons to be appointed by the mayor of the city of Boston, 1 of whom shall be the director of the Boston Redevelopment Authority, and 1 of whom shall be a

representative of the Greater Boston Chamber of Commerce; 3 persons to be appointed by the president of the senate, 1 of whom shall be the senate chairperson of the joint committee on state administration, and 1 of whom shall be a representative of the Greater Boston Convention and Visitors Bureau; and 3 persons to be appointed by the speaker of the house of representatives, 1 of whom shall be the house chairperson of the joint committee on state administration and 1 of whom shall be a representative of the Massachusetts lodging association. The house and senate chairpersons of the joint committee on state administration shall jointly chair the commission.

As part of its study and in making its recommendations the commission shall consider the following: (i) a comprehensive and coordinated strategy and plan for the use, reuse, lease, sale, conveyance or disposition of the auditorium, including the development of air rights above the existing facility and the garage; (ii) the continued use of the Hynes as a convention center venue owned, operated and maintained by the Massachusetts Convention Center Authority after the opening of the Boston Convention and Exhibition Center; (iii) the use of the Hynes Convention Center for any other purpose, other than as a convention center venue or as a convention center with other mixed uses, by any public or private entity or a combination thereof; (iv) the state, city, community, and local business interests, including but not limited to hotel, retail, and restaurant interests involved and impacted by (a) the continued use of the Hynes Convention Center as a convention center by the Massachusetts Convention Center Authority, a private entity, or a combination thereof, or (b) by the reuse of the Hynes Convention Center property for a use other than as a convention center venue or a mixed use thereof; (v) the feasibility of continued use of the Hynes Auditorium as a convention center with secondary development of the property, as a joint public/private partnership with the Massachusetts Convention Center Authority, including the development of air rights above the existing facility, subject to applicable state and local laws; (vi) the ownership and operation of the Boston Common Parking Garage; (vii) the feasibility of the proceeds or a portion thereof of any sale, conveyance, or disposition of the Hynes Auditorium or the parking garage to be allocated to the Authority; and (viii) any other issues, studies, proposals or impacts that may be relevant, pertinent, or material to the study, analysis, and review of the commission. The commission shall solicit and consider advice and comments from elected state and city officials and representatives from neighborhood, professional, trade and business groups affected by the potential use, reuse, lease, sale, conveyance or disposition of any interest in the Hynes Convention Center.

The commission shall prepare a final report of its findings resulting from its study, including legislative recommendations. The commission shall file the report with both the clerks of the house of representatives and the senate and shall also submit a copy of the report to the governor, the president of the senate, the speaker of the house, and the chairpersons of the committee on ways and means and the joint committee on state administration on or before December 30, 2005. No reuse, lease, or conveyance, as recommended by the commission, shall occur without approval by act of the General Court.

### **Pension Line Item Language**

SECTION 339. The amounts transferred pursuant to section 5B of chapter 29 of the General Laws, as most recently amended by section 163 of chapter 26 of the acts of 2003, shall be made available for the Commonwealth's Pension Liability Fund established under section 22 of chapter 32 of the General Laws. The amounts transferred pursuant to said section 5B of said chapter 29 shall meet the commonwealth's obligations under section 22C of said chapter 32, including retirement benefits payable by the state employees' and the state teachers' retirement systems, for the costs associated with a 3 per cent cost-of-living adjustment pursuant to section 102 of said chapter 32, the reimbursement of local retirement systems for previously authorized cost-of-living adjustments pursuant to section 102 of said chapter 32, and for the costs of increased survivor benefits pursuant to chapter 389 of the acts of 1984. Subject to the rules and regulations promulgated by the treasurer, the state retirement board and each city, town, county and district shall verify the cost thereof and the treasurer may make such payments upon a transfer of funds to reimburse certain cities and towns for pensions to retired teachers and including any other obligations which the commonwealth has assumed on behalf of any retirement system other than the state employees' or state teachers' retirement systems and including the commonwealth's share of the amounts to be transferred pursuant to section 22B of said chapter 32 and the amounts to be transferred pursuant to subsection (a) of the last paragraph of section 21 of chapter 138 of the General Laws. All payments for the purposes described in this item shall be made only pursuant to distribution of monies from the fund, and any such distribution and the payments for which distributions are required shall be detailed in a written report filed quarterly by the commissioner of administration with the house and senate committees on ways and means and the joint committee on public service in advance of such distribution. Such distributions shall not be made in advance of the date on which a payment is actually to be made. The state retirement board may expend an amount for the purposes of the higher education coordinating council's optional retirement program pursuant to section 40 of chapter 15A of the General Laws. To the extent that the amount

transferred pursuant to section 5B of said chapter 29 exceeds the amount necessary to adequately fund the annual pension obligations, the excess amount shall be credited to the Pension Reserves Investment Trust Fund of the commonwealth for the purpose of reducing the unfunded pension liability of the commonwealth.

#### **Payment of Non Contributory Pension by PRIT Fund**

SECTION 340. Notwithstanding any general or special law to the contrary, pension benefits funded through item 0612-2000 in fiscal year 2004 shall be funded from the Pension Reserves Investment Trust fund, as established pursuant to section 1 of chapter 32 of the General Laws. The state treasurer shall report to the house and senate committees on ways and means not later than November 15, 2004 on the benefits funded pursuant to this section. This report shall list the amount of benefit received by each individual through this funding in fiscal year 2004 and the amount of benefit projected to be received by each individual through this funding in fiscal year 2005.

#### **Preventive Medicine Contribution Requirement**

SECTION 341. Notwithstanding any general or special law to the contrary, the department of public health may require each health insurance carrier in the commonwealth, as defined in chapter 176O of the General Laws, and the group insurance commission, as established under chapter 32A of the General Laws, to contribute to the General Fund an amount necessary to total \$10,500,000 in the aggregate. The department shall assess the \$10,500,000 in proportion to each carrier's health insurance premiums written in the state in the most recent calendar year for which complete information is available on a calendar year basis, as reported to the division of insurance. Each carrier shall pay such proportion of \$10,500,000 as is determined by the relation which the health insurance premiums written during such calendar year by the carrier shall bear to the total health insurance premiums written during such calendar year by all carriers.

#### **Division of Capital Assets Maintenance and Management Operational Costs**

SECTION 342. Notwithstanding the provisions of any general or special law to the contrary, the department of capital assets maintenance and management may expend from capital authorizations amounts necessary to cover the operational costs of the department for fiscal year 2005.

#### **Federal Medicaid Assistance Percentage**

SECTION 343. Notwithstanding any general or special law to the contrary, an amount equal to \$270,000,000 from the Federal Medicaid Assistance Percentage Escrow Fund, established by section 14A of chapter 101 of the acts of 2003, and amended by section 1 of chapter 118 of the acts of 2003, shall be designated for expenditure in fiscal year 2005, and shall not contribute to the calculation of the fiscal year 2004 consolidated net surplus, as calculated by the state comptroller as of June 30, 2004, pursuant to section 5C of chapter 29 of the General Laws. Not later than 15 days after the effective date of this act, the state comptroller shall transfer this amount from that Fund to the General Fund.

#### **Toll and Fare Relief Transportation Reform XXVIII**

SECTION 344. For tax years beginning on or after January 1, 2004 but before January 1, 2005, in determining Part B adjusted gross income pursuant to subsection (d) of section 2 of chapter 62 of the General Laws, there shall be deducted from Part B gross income amounts expended by an individual during such tax year for the following: tolls paid for through a FastLane account, weekly or monthly transit passes for Massachusetts Bay Transportation Authority subway, bus, or commuter rail, ferry, regional transit authority bus, and other transit services in the commonwealth; provided, however, that amounts reimbursed by an employer or otherwise reimbursed shall not be deducted. In the case of a single person or a married person filing a separate return or a head of household, as defined in chapter 62 of the General Laws, filing a separate return, this deduction shall apply only to the portion of such expended amount that exceeds \$150, and the total amount deducted shall not exceed \$750. In the case of a married couple filing a joint return, this deduction shall apply only to the portion of such amount expended by each individual that exceeds \$150, and the total amount deducted shall not exceed \$750 for



each individual. The commissioner of revenue shall adopt regulations necessary for the implementation of this section.

#### **Uncompensated Care Pool Audit**

SECTION 345. Notwithstanding any general or special law to the contrary, the unexpended balance of any fiscal year 2004 expenditures described in subsection (4) of section 620 of chapter 26 of the acts of 2003 and in the tenth paragraph of section 644 of said chapter 26 shall be made available for expenditure in fiscal year 2005.

#### **Trial Court Transferability**

SECTION 346. Notwithstanding paragraph (a) of subsection (xxiii) of section 9 of chapter 211B of the General Laws, or any other general or special law to the contrary, the chief justice for administration and management may, from the effective date of this act through April 30, 2005, transfer funds from any item of appropriation of any trial court department to any other item of appropriation within the trial court department. These transfers shall be made in accordance with schedules submitted to the house and senate committees on ways and means. The schedule shall include the following: (1) the amount of money transferred from 1 item of appropriation to another; (2) the reason for the necessity of such transfer; and (3) the date on which the transfer is to be completed. No such transfer shall occur until 10 days after the revised funding schedules have been submitted in written form to the house and senate committees on ways and means.

#### **Renewable Energy Trust Fund**

SECTION 347. Notwithstanding any general or special law to the contrary, no later than July 15, 2004, the Massachusetts Technology Collaborative shall transfer \$17,000,000 to the General Fund from the Renewable Energy Trust Fund established pursuant to section 4E of chapter 40J of the General Laws. If said transfer does not occur by said date, any funds authorized for expenditure, transfer or allocation from any item of appropriation in sections 2, 2B or 2D of this act for said collaborative shall not be expended, transferred or allocated. Said transfer shall be in accordance with the provisions of subsection (l) of section 4E of chapter 40J of the General Laws, except that (i) there shall be no conditions precedent to said transfer, (ii) the condition precedent described in said subsection (l) shall be a condition subsequent to said transfer and (iii) the aggregate payments on account of the green power premium in any one fiscal year under all contracts entered into pursuant to the agreement described in said subsection (l) shall not exceed five million dollars. Said transfer shall be in lieu of the transfers from said Renewable Energy Trust Fund contemplated pursuant to section 69 of chapter 4 of the acts of 2003 and pursuant to said subsection (l). All municipal electric departments, public instrumentalities and other governmental entities in the commonwealth are hereby authorized to purchase electricity from the commonwealth or its designee pursuant to the terms of the agreement entered into between the Massachusetts technology park corporation and the commonwealth pursuant to said subsection (l) and to purchase electricity or certificates as described in said subsection (l) from said corporation or its designee, and said corporation is hereby authorized to undertake such sales to any entity in the commonwealth.

#### **Advanced Technologies in Health Care Trust Fund II**

SECTION 348. Notwithstanding any general or special law to the contrary, the comptroller shall transfer, effective June 30, 2004, an amount not less than \$10,000,000 from the fiscal year 2004 consolidated net surplus to the Massachusetts Technology Park Corporation, established under chapter 40J of the General Laws, for the creation of the Massachusetts Advanced Technologies in Healthcare Trust Fund, established under section 4G of chapter 40J of the General Laws.

#### **Stabilization Fund Transfer**

SECTION 349. Notwithstanding any general or special law to the contrary, on or before June 30, 2005, the comptroller shall transfer \$340,000,000 from the Commonwealth Stabilization Fund, established pursuant to section 2H of chapter 29 of the General Laws, to the General Fund. If tax revenues for the commonwealth exceed benchmarks set by the department of revenue based on the consensus revenue estimate, established pursuant to section 5B of chapter 29 of the General Laws, by the third quarter of fiscal year 2005, consideration shall be given to

reduce the amount of the Stabilization Fund transfer stated herein. Said reduction shall be determined by the house and senate committees on ways and means.

#### **Municipal Incentives for Smart Growth Zoning V**

SECTION 350. Not later than 10 days after the effective date of this act, the comptroller shall transfer \$2,000,000 from the General Fund to the Affordable Housing Trust Fund established by chapter 121D of the General Laws.

#### **Regional Tourism Facility Fund**

SECTION 351. Notwithstanding any general or special law to the contrary, in accordance with subsection (e) of section 35J of chapter 10 of the acts of 2002 \$770,000 shall be transferred from the Massachusetts Tourism Fund to the Regional Tourism Facility Fund in fiscal year 2005.

#### **MA Housing Authority Transfer**

SECTION 352. Notwithstanding any general or special law to the contrary, the Massachusetts Housing Finance Agency, established pursuant to section 2 of chapter 23B of the General Laws, shall transfer to the General Fund no later than June 30, 2005 \$4,000,000 from funds available pursuant to section 197E of chapter 111 of the General Laws.

#### **Low-Income Housing Tax Credit Conversion I**

SECTION 353. Not less 10 days after the effective date of this section, the comptroller shall transfer \$12 million from the General Fund into the Affordable Housing Trust Fund established by Chapter 121D of the General Laws.

#### **Low-Income Housing Tax Credit Conversion II**

SECTION 354. Section 353 shall be effective on January 1, 2006.

#### **Capital Gains Effective Date**

SECTION 355. Notwithstanding section 32 of chapter 186 of the acts of 2002 and sections 21 and 22 of chapter 364 of the acts of 2002, the following provisions of the General Laws shall be effective for tax years beginning on or after January 1, 2002:

(1) the second paragraph of subsection (m) of section 1 of chapter 62 of the General Laws, as appearing in section 2 of chapter 186 of the acts of 2002;

(2) paragraph (3) of subsection (b) of section 2 of said chapter 62, as appearing in section 6 of said chapter 186;

(3) the introductory clause, paragraph (1), paragraph (3), and paragraph (4) of subsection (c) of said section 2 of said chapter 62, as appearing in section 4 of chapter 364 of the acts of 2002;

(4) paragraph (2) of said subsection (c) of said section 2 of said chapter 62, as appearing in section 5 of said chapter 364;

(5) subsection (e) of said section 2 of said chapter 62, as appearing in section 7 of said chapter 364; and

(6) subsection (c) of section 4 of said chapter 62, as appearing in section 14 of chapter 186 of the acts of 2002.

#### **Early Education and Care Effective Date I**

SECTION 356. Sections 1 and 3 to 5, inclusive, of chapter 15D of the General Laws, inserted by section 35 of this act, shall take effect on January 1, 2005.

#### **Early Education and Care Effective Date II**

SECTION 357. Section 2 of chapter 15D of the General Laws, inserted by section 35 of this act, and sections 27, 28, 29 and 30 shall take effect on July 1, 2005.

**Small Business - 2% Sales Tax Retention III**

SECTION 358. Sections 119 and 121 shall take effect on January 1, 2005.

**Bail Lien Effective Date**

SECTION 359. Chapter 280A of the General Laws shall apply to all bail set after August 1, 2004, regardless of when the alleged offense which gave rise to the criminal charges occurred.

**Pension Reform XXV**

SECTION 360. Sections 84 and 85 of this act shall take effect on July 1, 2005.

**Transportation Reform XXIX**

SECTION 361. Sections 5, 127 and 218 shall take effect on December 31, 2005.

**Effective Date**

SECTION 362. Except as otherwise specified, this act shall take effect on July 1, 2004.